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FISCAL YEAR 1990 BUDGET AUTHORIZATIONS AND OVERSIGHT FOR THE U.S. CUSTOMS SERVICE, THE U.S. INTERNATIONAL TRADE COMMISSION, AND THE U.S. TRADE REPRESENTATIVE

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

MARCH 22, 1989

Serial 101-8

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CONTENTS

Page

Press release of Monday, March 6, 1989, announcing the hearing 2

WITNESSES

U.S. International Trade Commission, Hon. Anne Brunsdale, Acting Chairman, Richard Arnold, Director of Finance and Budget, and the Honorables Alfred Eckes, Seeley Lodwick, David Rohr, and Don Newquist, Commissioners 5

Office of the U.S. Trade Representative, Joshua Bolten, General Counsel and Acting Deputy U.S. Trade Representative, and Michael Doyle, Assistant U.S. Trade Representative for Administration 38

U.S. Customs Service, Hon. William von Rabb, Commissioner of Customs, D. Lynn Gordon, Assistant Commissioner for Commercial Operations, Samuel H. Banks, Assistant Commissioner for Inspection and Control, and William F. Riley, Comptroller 57

American Association of Exporters & Importers, Barry Nemmers 232

Copper & Brass Fabricators Council, Inc., Joseph L. Mayer 267

Joint Industry Group, Enforcement and Compliance Committee, William D. Outman 242

National Customs Brokers & Forwarders Association of America, Inc., J.H. Kent 262

National Treasury Employees Union, Robert M. Tobias 209

SUBMISSIONS FOR THE RECORD

American Cordage & Netting Manufacturers and the Cordage Institute, Ann Ottoson King, joint statement and attachments 274

Chevron U.S.A. Inc., Clair Ghylin, letter 276

Dry Color Manufacturers' Association, J. Lawrence Robinson, letter and attachment 278

Schaffer, Robert P., Price Waterhouse, Customs Services Practice, statement 281

United States Association of Importers of Textiles and Apparel, statement and attachment 289

FISCAL YEAR 1990 BUDGET AUTHORIZATIONS AND OVERSIGHT FOR THE U.S. CUSTOMS SERVICE, THE U.S. INTERNATIONAL TRADE COMMISSION, AND THE U.S. TRADE REPRESENTATIVE

WEDNESDAY, MARCH 22, 1989

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1302, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

FOR IMMEDIATE RELEASE
MONDAY, MARCH 6, 1989

SUBCOMMITTEE ON TRADE #3
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-1721

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A HEARING ON FISCAL YEAR 1990 BUDGET AUTHORIZATIONS AND OVERSIGHT FOR THE U.S. CUSTOMS SERVICE, THE U.S. INTERNATIONAL TRADE COMMISSION, AND THE U.S. TRADE REPRESENTATIVE

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, today announced a public hearing on Wednesday, March 22, 1989, on the fiscal year 1990 budget authorizations for the U.S. Customs Service, the U.S. International Trade Commission, and the Office of the U.S. Trade Representative. This hearing also will provide an opportunity for Subcommittee oversight of the operations of these agencies to determine if they are effectively and efficiently carrying out their legislative mandates.

The hearing will be held in room 1302 Longworth House Office Building, beginning at 10:00 a.m.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD:

Requests to be heard must be made by telephone to Harriett Lawler or Diane Kirkland [telephone (202) 225-1721] by close of business Thursday, March 16, 1989. The telephone request should be followed by a formal written request to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515. The Subcommittee staff will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee office [(202) 225-3943].

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are requested to briefly summarize their written statements. The full statement will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Subcommittee are required to submit 150 copies of their prepared statement to the Subcommittee on Trade office, room 1136 Longworth House Office Building, at least 24 hours in advance of their scheduled appearance. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Persons submitting a written statement in lieu of a personal appearance should submit six (6) copies of their statement by the close of business Monday, March 27, 1989, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, room 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing a written statement for the record of the printed hearing wish to have their statement distributed to the press and the interested public at the hearing, they may provide 75 additional copies for this purpose to the Subcommittee office, room 1136 Longworth House Office Building, prior to the start of the public hearing.

SEE FORMATTING REQUIREMENTS BELOW:

COMMITTEE ON WAYS AND MEANS FORMATTING REQUIREMENTS FOR PRINTING OF HEARING STATEMENTS, WRITTEN COMMENTS AND EXHIBITS

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will **not** be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and public during the course of a public hearing, may be submitted in other forms.

* * * * * * * * * * *

Chairman GIBBONS. Good morning, ladies and gentlemen. Today the Subcommittee on Trade is holding a hearing to consider the fiscal year 1990 budget request of the U.S. International Trade Commission, the Office of the U.S. Trade Representative, and the U.S. Customs Service.

The subcommittee will want to carefully examine these budget proposals to ensure that the funding request is adequate to carry out the work of the ever-expanding international trade function of the U.S. Government.

In addition to the budget issues, the hearing will also provide an opportunity for oversight of agency operations and programs.

With respect to the Customs Service, we all recognize the critical role that Customs plays as the Nation's first line of defense in the war on drugs.

Just last year, Congress provided additional resources and tools in the drug enforcement area by approving an Anti-Drug Abuse Act.

Customs deserves credit for their efforts in international drug interdiction, although the subcommittee is concerned that the taxpayers are getting a good return for the huge investment Congress has made in the drug interdiction, equipment and personnel.

The subcommittee is also very concerned about the commercial side of Customs' operations. We have received numerous complaints from the trade community about the difficulties encountered in importing and in the lack of uniformity of Customs' rulings in commercial enforcement activities.

In fiscal 1989, Congress approved funding for 640 new positions in the Customs Service to be allocated to commercial operations. We will want to know where and how this additional personnel is deployed.

For example, I have noticed that the fiscal 1990 budget request reduces the funding for commercial activities by $18 million and 396 positions. In other words, it about wipes out what we did last year—not quite, but just about.

During the last Congress, because of our concern about commercial operations, I requested the Subcommittee on Oversight under the chairmanship of Congressman Pickle to conduct its own investigation of Customs' services, including hearings, staff investigations, and site visits. I am pleased to announce that the Oversight Subcommittee will continue this project this year, culminating with a report to the Committee on Ways and Means and to this subcommittee of any recommendations for reform.

I anticipate that the Subcommittee on Trade will carefully review and will assist wherever possible the Subcommittee on Oversight, and expect to act on their report in this Congress.

Our first witness today is from the International Trade Commission, and the Acting Chairman, the Hon. Anne Brunsdale, is our witness. We welcome you here and I wonder, because we are running late, if you would try to summarize the testimony, and we will include the entire testimony in the record. We will have not only some oral questions here, but some written questions to submit for the record.

You may proceed, Ms. Brunsdale.

STATEMENT OF HON. ANNE BRUNSDALE, ACTING CHAIRMAN OF THE U.S. INTERNATIONAL TRADE COMMISSION, ACCOMPANIED BY RICHARD ARNOLD, DIRECTOR OF FINANCE AND BUDGET, AND HON. ALFRED ECKES, HON. SEELEY LODWICK, HON. DAVID ROHR, AND HON. DON NEWQUIST, COMMISSIONERS

Ms. BRUNSDALE. Thank you very much, Mr. Chairman, and good morning.

I am very pleased to be here this morning to present the budget request of the U.S. International Trade Commission for fiscal year 1990. Seated beside me is Richard Arnold, our Director of Finance and Budget. Also, four of my fellow Commissioners—Alfred Eckes, Seeley Lodwick, David Rohr, and Don Newquist—are in the room today. Our sixth Commissioner, Ron Cass, is out of the country at this time.

I am aware of your time constraints, Mr. Chairman. So, let me just make a few statements, and then we can move along.

The budget request that I present to you this morning has the unanimous approval of the Commission. It totals $39,943,000 and provides for 502 full-time permanent positions.

This request reflects an increase of $3,985,000 over our fiscal 1989 appropriation. Two-thirds of that increase is for nondiscretionary salary costs, including full funding for our 502 positions, anticipated step increases, promotions and related benefits, as well as funding for the effects of the January 1989 pay raise. Of the remaining third of the increase, the most significant portion is for the care and feeding of our data automation capability.

Let me emphasize that the increases we are requesting do not represent growth in either operating or program levels. Rather, they maintain operations at currently authorized levels, and provide sufficient resources to allow the Commission to carry out its responsibilities.

The Commission has two primary responsibilities. First, we make decisions on injury and causation in unfair and fair trade investigations, and second, in what I call our "think-tank" capacity, in which we provide assistance, analysis and studies to the executive and legislative branches.

It is always difficult for the Commission to project its caseload a year in advance. One reason for this is the difficulty of estimating how the various factors affecting our caseload will balance out. The other major reason is that the Commission does not generate its own investigations, but instead responds to external filings, requests, and statutorily imposed deadlines.

Our investigative workload, which declined from 239 new investigations in fiscal 1985–92 in fiscal 1988, is expected to increase this year and next. Currently we project some 122 new investigations in fiscal 1989 and 125 in fiscal 1990. I would note that the fact that the Commission has already instituted 59 new investigations so far this year compared to 20 in the same period for fiscal 1988, suggests that our fiscal 1989 estimate may be somewhat low.

In addition to expecting a rise in caseload in 1989, we also expect the scope and analytical sophistication of our cases to increase. Furthermore the number of work years devoted to each investiga-

tion will rise as a result of the Commission's new programs involving data verification and statistical support.

Finally, the Commission is heavily involved in supporting the Uruguay round and in implementing some of the changes in our situation that came about as a result of the Trade Act of 1988 and certain other legislation.

Let me note in closing that we are very proud of our new home at 500 E Street, SW., and are deeply appreciative of the strong support of this committee in making it possible.

Mr. Chairman, I will skip the rest of my statement. Thank you again for your attention. I would be pleased to answer any questions you may have.

[The statement of the Hon. Anne Brunsdale follows:]

STATEMENT OF ANNE BRUNSDALE, ACTING CHAIRMAN
UNITED STATES INTERNATIONAL TRADE COMMISSION
BEFORE THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U. S. HOUSE OF REPRESENTATIVES
MARCH 22, 1989

Mr. Chairman and members of the Subcommittee, I am pleased to be here today to present the U.S. International Trade Commission's budget request for fiscal year (FY) 1990. Seated beside me is Richard Arnold, the Commission's Director of Finance and Budget. Commissioners Alfred Eckes, Seeley Lodwick, David Rohr, Ronald Cass, and Don Newquist also are here today.

The Budget Request

The budget request that I am presenting has the unanimous approval of the Commission. It totals $39,943,000 and provides for 502 full-time permanent positions.

In developing this budget request, the Commission examined its needs and made every effort to improve our utilization of resources. The increases do not represent growth in either program or operating levels. Rather, they maintain Commission operations at current authorized levels, and provide sufficient resources to allow the Commission to accomplish its mission.

It is always difficult to anticipate all of the demands that will face the Commission 12 to 18 months in the future. Due to the heightened uncertainty of our investigative caseload this year and the additional tasks placed on us by new legislation, it would be premature to request a change in authorized resource levels at this time.

The $39,943,000 represents an increase of $3,985,000 (or 11%) over our FY 1989 appropriation. Two thirds of this increase (or $2,598,000) is for nondiscretionary salary costs, including full funding for our 502 positions, anticipated step increases, promotions and related benefits, as well as funding for the effects of the January 1989 pay raise. The balance of the increase ($1,387,000) is for necessary support services.

The Commission's substantive responsibilities involve cases under the import relief statutes and studies and reports under section 332 of the Tariff Act of 1930 (19 U.S.C. § 1332). Our total investigative workload, which declined from 239 investigations instituted in FY 1985 to a low of 92 investigations in FY 1988, is expected to increase in FY 1989 and FY 1990. The Commission recently projected some 122 new investigations for FY 1989 and 125 for FY 1990. Data through the first five months of FY 1989 suggest that our estimate for FY 1989 may be somewhat low.

In addition to our regular investigative workload, the Commission is heavily involved at this time in providing support to Executive Branch efforts on the GATT-sponsored Uruguay Round of trade negotiations and in meeting the requirements of the Omnibus Trade and Competitiveness Act of 1988.

Import Relief Investigations

The largest part of our caseload consists of investigations under the antidumping and countervailing duty statutes (section 303 and title VII of the Tariff Act of 1930, 19 U.S.C. §1303, 1671 et

seq.). 1/ The title VII caseload, which declined from 185 new investigations in FY 1985 to 65 in FY 1988, is expected to increase. We project that 75 new title VII investigations will be instituted in FY 1989 and 75 in FY 1990. In the first five months of FY 1989 the Commission instituted 43 title VII cases compared to 11 during the comparable period for FY 1988. This suggests, as I indicated above, that our FY 1989 projection may be low.

The Omnibus Trade and Competitiveness Act of 1988 amended portions of the antidumping and countervailing duty statutes in ways that may increase both the number of cases filed and the amount of Commission effort required in conducting the investigations. For example, new provisions add a number of factors, such as the impact of imports on research and development efforts by domestic industries, to be considered in assessing injury or threat of injury. The Act also requires the Commission to release under administrative protective order (APO) a much broader range of data to a broader class of requesters than was required previously. That is, the Act requires release of all business proprietary information presented to or obtained by the Commission during a title VII investigation, whereas in the past the Commission released only the price and cost-of-production data of those firms supporting the petition. While the Commission's experience with administering this new provision is still limited, preliminary indications are that additional resources are being used.

In addition to the expected rise in caseload in FY 1989, we also expect the sophistication of the analysis required by our cases to continue to increase. Moreover, the Commission's new programs involving data verification and statistical support will increase the number of workyears devoted to each investigation.

Some of the Commission's more publicized cases are the so-called fair-trade cases -- that is, cases in which petitioners need not allege any unfair trade practice in order to obtain import relief. These import relief petitions are filed under sections 201 and 406 of the Trade Act of 1974 (19 U.S.C §§ 2251 and 2436). Section 201 is known as the "escape clause." In section 201 investigations, the Commission determines whether domestic industries are eligible for import relief and recommends appropriate action to the President. In addition, under section 204 of the Trade Act (19 U.S.C. § 2254), the Commission conducts "review" investigations and reports to the President on the probable economic effect of modifying, extending, or terminating the relief previously provided by the President as a result of a section 201 petition. Section 406 of the Trade Act of 1974 authorizes section 201-type investigations on market disruption from imports from nonmarket countries.

1/ There are two ways to count the title VII caseload -- by investigation numbers and by petitions (i.e., by product line). In the case of title VII, a single petition is given one investigation number for each foreign country covered by the petition and sometimes one for each separate major product, even though typically a single investigative team does all the work, a single hearing is held, information is collected from the same group of domestic producers, and a single report is produced. Thus, counting investigation numbers will give a higher workload figure than counting petitions.

For example, in FY 1986, the Commission instituted 158 title VII investigations covering 87 petitions (product lines.) In FY 1987, 99 investigations were instituted covering 55 petitions. And in FY 1988, the Commission instituted 65 investigations for 33 petitions. As the data indicate, the product-line approach reflects a declining caseload at a rate consistent with the decline when counted by investigation numbers.

During FY 1988, the Commission instituted one escape-clause investigation and one review investigation. We project two escape clause investigations for each of FY 1989 and FY 1990. In addition, the Omnibus Trade and Competitiveness Act of 1988 might increase the Commission's effort in connection with the escape clause provisions. For example, a new provision authorizes expedited determinations 21 days after a petition is filed in cases involving perishable agricultural products, provided that certain monitoring has been underway for at least 90 days. The precise impact of the new law on Commission activity is uncertain at this time.

The Commission expects that significant resources will continue to be devoted to investigations under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337). These investigations are based on complaints alleging unfair methods of competition and unfair acts in the importation or sale of articles into the United States, typically, the infringement of an intellectual property right, such as a patent, trademark, or copyright. Currently, the Commission is concluding significant investigations involving EPROMs (erasable, programmable computer memory components) and in the area of biotechnology.

We project that 24 new section 337 investigations will be instituted in FY 1989 and 28 in FY 1990, compared to 11 in FY 1988. During the first five months of the fiscal year, we instituted four such investigations. Another three investigations have been instituted in March 1989, and two complaints are awaiting a vote on institution by the Commission. It should be noted that the number of section 337 investigations instituted does not, of itself, accurately reflect workload. The complexity of the technology at issue, the number of alleged unfair acts, and the level of staff participation required in each investigation must be taken into account.

The Omnibus Trade and Competitiveness Act of 1988 amended section 337 in several significant respects. In investigations involving the alleged infringement of statutorily protected intellectual property rights, it removed the requirement that a domestic industry prove economic injury as a result of the alleged unfair act, and it expanded the definition of domestic industry. The Act also authorized the Commission (1) to order seizure and forfeiture of articles under certain conditions, (2) to issue limited exclusion and cease-and-desist orders against respondents that fail to appear in section 337 investigations, and (3) to impose greater penalties for violation of cease-and-desist orders. Moreover, if a section 337 complaint includes a request for temporary relief, the Commission must now render a decision on such relief within 90 days (or 150 days in more complicated cases) and may require complainants to post bonds in order to obtain temporary relief. As a result of these amendments, section 337 investigations should be less costly for complainants in most instances.

Studies and Reports

The Commission frequently receives requests from Congress or the President to conduct investigations on trade and tariff issues under section 332 of the Tariff Act of ~~1930 (19 U.S.C.~~ § 1332). We expect requests to institute 18 new section 332 studies in FY 1989 and 18 in FY 1990, compared with 12 in FY 1988 and 11 in FY 1987. All of the studies instituted in FY 1988 and FY 1987, as well as in the first five months of FY 1989, were the result of a congressional or a presidential request.

We now have 13 section 332 studies underway, 8 of them requested by the President and 5 by Congress. Among the studies requested by the President are Service Sector Profiles and Barriers to Trade in Services; Agricultural and Tropical Products--Literature Search Regarding Trade Distortions and Effect of Trade

Liberalization, and Calculation of Tariff Equivalents; United States/Israel Free-Trade Agreement--Probable Effects on U.S. Industry and Consumers of Certain Remaining U.S. and Israel Tariff Reductions; and Probable Economic Effects of Providing Duty-Free Treatment for Watches under the *Generalized System of Preferences*.

Studies currently underway at the request of Congress include Western Steel Market--Analysis of Market Conditions and Assessment of the Economic Effects of the Voluntary Restraint Agreements on Steel-Producing and Steel Consuming Industries; Effects of Steel VRAs on Steel Consuming Industries; Economic Effects of Significant U.S. Import Restraints; and Effects of Greater Economic Integration within the European Community on the United States.

In FY 1988, we completed a number of significant projects. They included five global competitiveness analyses requested by Congress -- on textile mills, steel sheet and strip, U.S. automotive parts, oilseed and oilseed products, and optical fibers, technology and equipment. We also completed two studies requested by the President -- the effect of foreign protection of intellectual property rights on U.S. industry and recent Japanese measures to promote structural adjustment.

Other studies completed in FY 1988 included four requested by Congress -- the use and economic impact of TSUS items 806.30 and 807.00, benefits to U.S. consumers from temporary duty suspensions in the Trade and Tariff Act of 1984, implications of foreign-trade zones for U.S. industries, and the pros and cons of initiating negotiations with Japan on the possibility of a U.S.-Japan free-trade agreement -- and one study requested by the President -- the continuity of import and export trade statistics after implementation of the Harmonized System.

Some of the technical support that the Commission provides to the United States Trade Representative in the Uruguay Round of trade negotiations is in the form of formal reports requested under section 332. We expect this to be a major activity over the next two to three years. In addition, the Omnibus Trade and Competitiveness Act of 1988 opens the possibility of a number of new types of 332 investigations, including the monitoring of "downstream" product dumping and additional monitoring related to "escape clause" actions. The extent to which these provisions will generate additional work is unknown at this time.

The Commission will continue to play an important role with respect to the Harmonized System. During FY 1987 and FY 1988, much of our effort in this area was focused on the conversion of the U.S. customs tariff into the nomenclature structure of the Harmonized System. This effort culminated in the publication of concordances and trade tables providing U.S. import and export trade data for the past five years in terms of the Harmonized System. Beginning with FY 1989 and FY 1990, the Commission will publish the Harmonized Tariff Schedule, a document similar in size and complexity to the old TSUSA. We expect that Commission staff will continue to be called upon to provide advice and assistance on these matters.

The Omnibus Trade and Competitiveness Act of 1988 provides for new Commission activities with respect to the Harmonized System, including investigations (1) to recommend changes to the Harmonized Tariff Schedule resulting from sustained Customs protests, (2) to recommend to the President ways of modifying the Harmonized Tariff Schedule to implement international agreements that promote uniformity, ensure modernization, alleviate administrative burdens, and make technical corrections, and (3) to assess the operation of the U.S. Harmonized System after its first year.

The Commission continues to produce periodic reports on specific topics as required by presidential proclamation or other legal requirement. In FY 1988 these included reports on nonrubber footwear, rum, autos, tungsten, and the performance of the steel industry. Copies of these reports are provided to Congress, the Executive Branch, and other agencies, as well as to requestors outside the Government.

In addition to these reports and studies, the Commission provides numerous background reports on proposed legislation to the Commission's oversight committees, as well as a great deal of informal assistance. The number of such reports was over 100 in FY 1988. This demand is expected to continue.

New Offices within the Commission

The Commission projects an increase of four positions and related costs in FY 1990 to staff the new Trade Remedy Assistance Office and the Office of Inspector General. For FY 1990, the costs of these new and expanded activities will be absorbed within the Commission's request for full funding of its currently authorized positions of 502 full-time positions.

Trade Remedy Assistance. Pursuant to the Trade and Tariff Act of 1984, the Commission established a Trade Remedy Assistance Center (TRAC) to provide (1) general information to the public on remedies available under the trade laws and (2) technical assistance to eligible small businesses concerning petition and application procedures under trade remedy laws administered by the Commission. During FY 1988, TRAC received approximately 230 inquiries from small businesses, Congress, government agencies, law firms, trade associations, the press, and academia.

The Omnibus Trade and Competitiveness Act of 1988 expands the scope of the assistance previously furnished through TRAC. The Act requires the Commission to establish a separate Trade Remedy Assistance Office to render technical assistance, up through appeals to the administering agency (including informal legal advice), to eligible small businesses seeking remedies and benefits under certain trade laws administered by the Commission and other federal agencies. We expect that the number of requests for information and technical assistance from small businesses will increase in FY 1989 and FY 1990, particularly in view of the Act's requirement that the Small Business Administration facilitate access to the Trade Remedy Assistance Office.

The Commission officially established the new Trade Remedy and Assistance Office on November 8, 1988 and staffing for the new office is nearly complete.

Office of Inspector General. The Inspector General Act Amendments of 1988 require the Commission to establish and maintain an independent Office of Inspector General by April 16, 1989. The Commission officially established the Office of Inspector General on February 3, 1989. We expect the ITC's Inspector General to be on duty soon, and an additional staff position should be filled soon thereafter. This office will require separate space and support services equivalent to those provided to other offices within the Commission. The establishment of an IG function at the Commission is an enhancement of our current internal audit function, which is provided by contract with a public accounting firm.

Litigation Workload

The Commission has authority to appear in court on its own behalf, rather than refer cases to the Department of Justice. The size and complexity of the Commission's litigation caseload has increased steadily since the early 1980s, from 39 active cases in January 1984 to 60 cases pending before the courts on December 31, 1988. Although the number of cases may diminish slightly in the

near term, the Commission expects its litigation caseload to increase from the current level over the course of the year.

Relocation

Public Law 98-523 (October 19, 1984) authorized the transfer of the U.S. International Trade Commission's building at 701 E Street, N.W. to the Smithsonian Institution and required the General Services Administration to relocate all Commission functions in a single, downtown Washington, D.C. building. We completed our move into our new headquarters at 500 E Street, S.W., in January 1988. This is the first time since 1975 that all parts of the Commission have been at a single location. The Commission and its staff appreciate the strong support of our authorization and appropriations committees in this matter.

General Accounting Office Recommendations

The General Accounting Office made several observations during the review of the Commission that it completed in February 1987. As a result, new procedures have been implemented in the areas of procurement, the safeguarding and handling of security information, and the safeguarding and handling of confidential business information. The Commission is reviewing its information resources management responsibilities and its methods of verifying data. Also, we continue to examine our questionnaire process.

Conclusion

It is likely that trade and trade legislation will remain in the forefront of public debate for several years. As a result, the Commission's quasi-judicial determinations under the trade laws will continue to play an important role. In addition, the new round of trade negotiations begun in Punte del Este in 1986 have created new demands for comment and advice. Finally, new trade legislation, the implementation of the Harmonized nomenclature, changing trade barriers, continued concerns over the treatment of intellectual property rights, among other things, will all affect the growing demand for sophisticated analysis in import relief investigations and for fact-finding studies requiring greater expertise in both international trade and industrial organization.

It is important that Congress have confidence in the Commission's ability to provide sound analysis and data to trade policy makers and at the same time to fulfill its responsibility for investigating claims under the import relief laws. The Commission's budget request for fiscal year 1990 will provide sufficient resources to meet these demands.

I will be pleased to answer any questions you may have.

Thank you.

Chairman GIBBONS. Thank you, ma'am. I am going to drop by some time unexpectedly and walk past your place, so if I come by, do not be surprised. It is just a friendly visit——

Ms. BRUNSDALE. We would love it.

Chairman GIBBONS. If it is raining, I may just stop in there and visit a little with you. I walk that way going home sometimes.

Ms. BRUNSDALE. I am sure we all wish very much that you would come and come soon.

Chairman GIBBONS. Good. Let me ask you—we often ask you for studies that we wish had been done yesterday, and we give you about a yesterday schedule to complete these studies.

I notice that it does take you, as professionals at the top, some time to review these studies before they are turned over to us.

Sometimes, we get the impression that you review them too long before we get the information. Could you suggest how we could perhaps speed up the review of these studies and get them out, so that they would meet our time schedules.

I realize we are very impatient when it comes to gathering information, but is there any way in which you feel that the Commission could perhaps expedite that?

Ms. BRUNSDALE. That is a good question, and it is a tough question.

It honestly is my impression that ITC staff works diligently and in a very timely manner on these studies. I am also aware of the increased complexity of the studies that they are now being asked to do—the data-gathering challenges and the more sophisticated analysis that is generally involved. So shortening the period in which the staff works is very difficult.

Now, the review period for the Commissioners is usually about 2 weeks—sometimes a little more, and sometimes a little less. With six of us taking a look at each study, this period is also a little hard to shorten.

Then there is the initiation period of the studies. That is the period when ITC staff working with staff here on the Hill or at the USTR, depending on who requested the study, to be sure that the study plan we are drawing up will meet the requirements of the requester. Sometimes this period runs a little longer than would be advisable or ideal, but when it does, there normally is a good reason.

Now, I do not mean to say that we ought not to do our best to shorten the study time. I think our new data handling capabilities, particularly as we become proficient in their use, should help there. Moreover, our questionnaire design project ought to shorten both the time involved in questionnaire preparation and the response time on the part of the people to whom we send the questionnaires.

Mr. Chairman, I will talk with staff and my colleagues and see if we can come up with a report for you that takes a very careful look at the whole process.

Chairman GIBBONS. Anything that you can do to speed up the studies would help us, and we apologize for probably asking for the studies later than we should, but it is important that we get the studies. We do rely upon them a great deal, so anything on either end of this cycle that would improve the performance time, let us

know, but of course, we do want quality studies. We realize that the review process is a very important process.

I just want all of us to be aware of it. We will try to keep our number of requests to a minimum, and we will try to not go back and ask you to investigate something that you just finished investigating a year or so ago. If you find that we do that, just call it to our attention. We may——

Ms. BRUNSDALE. But those are the easy ones.

Chairman GIBBONS. Yeah. [Laughter.]

You may just call it to our attention with a brief update or something of that sort, rather than a whole new start.

You have been getting more court challenges of your decisions recently than you have in the past. What do you think is the cause of this?

Ms. BRUNSDALE. As I recall, our court challenges rose from 39 in 1984, to a peak of 82 in early 1988 and then fell back to about 60. The pattern indicates what I think we have always assumed. That is, appeals of our decisions normally come roughly 2 years after we have decided the case, and what this means is that the pattern of rise and fall in the number of ITC decisions being appealed to our reviewing courts probably tracks the pattern of caseload at the ITC, with a lag.

Thus, when our caseload goes up, we would expect a rise in caseload at our reviewing courts roughly 2 years later. When our caseload comes down, we would expect a falling caseload at our reviewing courts in 2 years or so. And that is indeed, what we see. So the increased challenges in 1986, 1987, and 1988 reflect the increased caseloads that came in the 1983, 1984, 1985, and early 1986.

Chairman GIBBONS. You are asking for about an 11-percent increase this year. In view of the fact that you have not filled the vacant positions that you have had, what makes you believe that you are going to be able to fill them this year?

Ms. BRUNSDALE. We did not fill all our vacant positions in fiscal year 1987 and 1988 because our caseload was falling in each of those years. As a result, our managers did not feel the urgency to recruit and hire.

Quite simply, the positions were not needed, so we did not hire. Instead, we ended up turning back a goodly sum of funds to the Treasury in each of those years.

This year——

Chairman GIBBONS. What——

Ms. BRUNSDALE. Pardon?

Chairman GIBBONS. Go ahead.

Ms. BRUNSDALE. This year, our caseload is going up. If the increase that we have had in the first 5 months should continue at the same rate as in those 5 months, we would exceed our estimate of 122 cases for this fiscal year, and would likely see 140 to 145 cases.

Chairman GIBBONS. Let me ask you—why do they seem to vary from year to year? I remember one year, the steel companies ganged up on you, and dumped the garbage can on you—[Laughter.]

The computer printouts and called them cases, and it just overwhelmed your organization. Then we put on the VRA's in response

to that, so I imagine their cases dropped off. Are their cases beginning to pick up again?

Ms. BRUNSDALE. The steel cases?

Chairman GIBBONS. Yes.

Ms. BRUNSDALE. No. There has not been any real increase in steel cases as of this moment. If the VRA's come off, we would of course expect an increase in steel cases.

Chairman GIBBONS. Do you have any steel cases at all?

Ms. BRUNSDALE. We had a pipe and tube case just the other day.

Chairman GIBBONS. You had a pipe and——

Ms. BRUNSDALE. A steel pipe and tube case.

We have had various kinds of steel cases over the last couple of years—involving countries that are not covered by the VRA's.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Thank you very much, Mr. Chairman, and welcome Ms. Brunsdale.

I do not recall whether the chairman asked—how are your new quarters working out?

Ms. BRUNSDALE. Wonderfully.

Mr. PEASE. Are they? Almost as good as the old ones? [Laughter.]

Ms. BRUNSDALE. We do miss being able to look up the circular stairway in the old building to the sky. It was a lovely sight. We miss some of the other nice things about that building, but then there are also things about that building that we are very glad to be rid of.

Mr. PEASE. You indicated that your budget request has the unanimous support of all of the Commissioners. Is your budget request subject to review by OMB before it comes to us?

Ms. BRUNSDALE. No, it is not, Congressman Pease.

Mr. PEASE. That is how we have truth in budgeting in your case, than the other way. [Laughter.]

Well, let me ask you about caseload trends first, Mr. Chairman. Is it at all possible for you to predict whether the caseload is likely to go up or down, or is it just a hit-or-miss thing depending upon how many cases happen to be filed?

Ms. BRUNSDALE. It is very difficult to predict, Congressman Pease. Because of the many factors that affect our caseload, it is difficult to know how they are going to balance out at the end of the year.

This year, however, we all feel fairly confident about the rise in caseload that we are predicting. Our current prediction is 122 for fiscal year 1989. And, as I said to Congressman Gibbons if we continue to initiate new cases at the rate we experienced in the first 5 months, our caseload will reach something more like 145 this year, compared to 92 last year.

Mr. PEASE. I see, and did I pick up from your response to Mr. Gibbons that, for that reason, you anticipate trying to fill all of your allocated slots?

Ms. BRUNSDALE. Yes, we do, and as a matter of fact, we have been moving in the last couple of months to increase hiring. Permanent full-time employees now total 474.

Mr. PEASE. I see.

Ms. BRUNSDALE. Some 10 or so more than we had over most of the last 2 years.

Mr. PEASE. OK. Well, I would not want the hearing to go by without my stating that, in my view, it is commendable that you did not fill all of your slots last year when you realized that your caseload was down.

Allegedly, there is a tendency in Federal agencies to spend every dime that is appropriated to them so that the base will not be lower for next year's calculation.

My constituents often express irritation at Federal agencies that go out and spend all the money they have left at the end of the fiscal year in order to maintain a high base.

I think your determination that you did not need additional people and, therefore, were going to turn money back to the Treasury is a very commendable one, and I want to congratulate you and your fellow Commissioners for that.

Ms. BRUNSDALE. Thank you very much.

Mr. PEASE. Now, Ms. Brunsdale, I think you are aware that I had some concerns about the performance of your predecessor as Chairman of the Commission. I believe Ms. Liebeler was your immediate predecessor. Was she?

Ms. BRUNSDALE. Yes.

Mr. PEASE. OK. My concern was that she appeared to be using, shall we say, unique reasoning for some of the decisions that she made, and I think there was a period on the Commission when there were a number of split decisions.

The Trade Bar seemed to feel that Ms. Liebeler's reasoning in these cases was considerably outside the mainstream, outside the tradition of ITC decisions in the past. I think it is fair to say that her performance in that regard was a contributing factor to the difficulty she had in gaining confirmation to the Federal bench.

I also seem to recall—perhaps I am wrong—that in a number of those votes, you were an ally—if that is the right word—of Ms. Liebeler, or at least a person who voted similarly to her on some of those controversial decisions. Perhaps you could refresh my memory whether that is correct or not, and then I would just like to ask whether, now that you are Acting Chairman, you consider yourself in the mainstream of past decisions and past reasoning precedence, or whether you are—if you ever were—still inclined to support the sort of new thinking that Ms. Liebeler tried to bring to her decisionmaking process?

Ms. BRUNSDALE. That is a big question. Let me preface my answer by saying, first, that I am a friend of Susan Liebeler and have great respect for her; and second, it is not my practice to comment on the decisionmaking approaches of any of my colleagues. I have enough to do worrying about my own approach and trying to do the best I can with what I regard as a very difficult and worthy job.

As to my voting pattern, let me say that Chairman Liebeler and I voted sometimes voted together—that is, voted the same way—and sometimes did not. Let me also say that my general analysis in title VII cases, which account for the bulk of the ITC's caseload, Chairman Liebeler's. I used a very different analysis, from hers therefore from the beginning, and arrived at different conclusions from time to time.

As to my own approach, I use a very straight-forward framework based on simple techniques, economic and trend analysis tied tightly to the factors that are listed in the statute. In this analysis, I attempt to do what the Commission is asked to do—that is, examine the condition of the industry, and the specified causation factors to determine whether the subject imports are causing material injury to the industry.

Mr. PEASE. Would you describe your relations with the other members of the Commission as collegial at this point? Is there a fair amount of agreement among the Commissioners on most decisions?

Ms. BRUNSDALE. I think my relations are collegial. I think they have been so for a long time.

You must understand that six strong-minded people will differ about many things. Indeed, one of the reasons for the Commission structures is to take advantage of different points of view.

As a matter of fact, as you may know, Congressman, I studied regulation and the independent regulatory commissions, for some time before coming to the ITC. I concluded, among other things, that there is something about the Commission structure that encourages discussion, differences of opinions and, to some extent, controversy. And I think it is a good idea.

So yes, I think we are collegial. We do differ. We discuss those differences, and solve them as best we can.

Mr. PEASE. OK. I appreciate that. Even here in Congress occasionally we disagree with each other. [Laughter.]

And we try to be collegial about it, but even when we do—well. You are Acting Chairman and the leader of the ITC. Would you expect under your leadership the Trade Bar would feel that the decisions of the Commission tend to be somewhat more predictable and based on precedence than they were perhaps under Ms. Liebeler?

Ms. BRUNSDALE. It is surely one of my absolutely top objectives to bring about predictability, transparency, and consistency in ITC decision making.

Mr. PEASE. Very good. I appreciate that and look forward to watching the ITC develop and flower under your leadership. Like the chairman, I too will stop by and see you one of these days. Thank you.

Ms. BRUNSDALE. You would be most welcome.

Chairman GIBBONS. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

I have no questions. I just want to thank Commissioner Brunsdale for her presentation this morning and wish them continued success.

Ms. BRUNSDALE. Thank you, Congressman.

Chairman GIBBONS. Mr. Crane.

Mr. CRANE. I apologize for a tardy arrival, Commissioner. We had our conference to elect our new whip to replace Dick Cheney this morning, and that was the cause of the delay.

I have just one question——

Mr. PEASE. Would the gentleman yield?

Mr. CRANE. Yes.

Mr. PEASE. You can't just drop that on us without telling us who got the vote. [Laughter.]

Mr. CRANE. Well, I left before the vote was tallied. And a reporter asked me, as I was walking out of the building, who did you vote for, and I said the next whip. [Laughter.]

But, no, to answer the question, I found out afterwards, that Newt Gingrich won it. I don't know what the vote margin was.

Mr. PEASE. I thank the gentleman for yielding.

Mr. CRANE. Commissioner, some members of the business community have raised concern about the limited extent of access by in-house counsel to confidential business information in section 337, Intellectual Property Rights Cases.

I have one request and one question. Could you provide for the record a list of section 337 cases over the most recent 3 years, and indicate in which cases a request for access by in-house counsel was made and either granted or denied?

And the question is, What are your criteria for granting such access?

Ms. BRUNSDALE. We surely can provide that list for you, Congressman.

Would you like me to answer any part of it orally now, or would you prefer to get it all in writing?

Mr. CRANE. No. I think for the record is fine as far as the list.

[The information is in the formal answers to questions submitted on p. 22.]

Mr. CRANE. But if you could indicate criteria for granting such success.

Ms. BRUNSDALE. Surely. I would be very happy to.

It has long been our practice in section 337 cases to release confidential business information to in-house counsel if the parties in the case agree to such release. If all the parties agree, the confidential information will be released to in-house counsel. In effect, we go along with their agreement. Our reviewing court, the Federal Circuit Court of Appeals, approved this practice in a case decided in 1986.

Now, as you may know, such release rarely happens because the parties rarely agree to it. There was a case that was completed not very long ago in which there was an agreement between the parties to engage in a partial release of confidential information. But the process became an administrative nightmare, because the parties had agreed to release some information but not all of it, and began to get mixed up as to what information fell in which category.

I'm sure I've just given you a very simple statement of what was a very complex situation. In any event, releasing the information became such trouble that finally the parties got together and agreed to terminate their agreement. So it is a difficult thing to bring about.

Mr. CRANE. I thank you, Commissioner, and that's the extent of my questions, Mr. Chairman.

Chairman GIBBONS. Mr. Guarini.

Mr. GUARINI. Thank you, Mr. Chairman.

Just a few short questions. With regard to the increase of 11 percent, I understand that most of it is for workload due to the trade agreement in the Trade Act just passed.

Is there much of a workload that has come as a result of the Uruguay round? Are you required to do that in preparation for that?

Ms. BRUNSDALE. Yes. We have already felt the impact of the Uruguay round negotiations. For example, one of the things we have done is to hold hearings in 11 cities across the country to listen to the views of business interests on both sides as to the impact on their industries if tariffs are reduced in the course of the Uruguay round.

Mr. GUARINI. You say you're doing considerable studies concerning the Uruguay round?

Ms. BRUNSDALE. Yes.

Mr. GUARINI. What about 1992, the Common Market, how are we preparing for that? How are we going to get ready for the tremendous amount of changes that are taking place in the reorganization of the European Market?

Ms. BRUNSDALE. Congressman, we have two studies underway on EC 1992. One is a very large study in which we are collecting background information on all of the directives that either are issued or are forthcoming. We will prepare worksheets on each of them, and then, in our final report, we will describe and analyze in some detail the more significant directives, the ones that are likely to have the biggest impact on American commerce.

Mr. GUARINI. You say that you are doing hearings in a number of cities concerning the Uruguay round.

Are you doing anything similar concerning 1992? Do you intend to have any hearings in addition to the reports that you stated? How are you collecting the information as to what impact it is going to have, the Common Market is going to have on our trading market archives? How will you assess it? Will you have hearings? Do you have any plans or programs? Will it be a different training of some of your personnel? Will there be a need for more personnel?

Ms. BRUNSDALE. At this time we do not see a need for more personnel.

We are collecting information several ways. First we are sending research teams to Europe to talk to EC personnel and to people in the various capitals to find out about the general procedures and what the directives are.

Second, there will be a hearing on EC 1992 in about a month, April 11. I believe.

Mr. GUARINI. How are you coordinating your activities with the USTR and with the other agencies of the U.S. Government, who would be interested in 1992? Are you just doing this unilaterally yourself, or is there a structure, a coordination that our U.S. effort is taking?

Ms. BRUNSDALE. We are doing the big EC 1992 study at the request of Congress, and we are doing a smaller study on procurement within the EC 1992 framework at the request of the USTR. Now, our people keep in touch with their counterparts here on the

hill and at the USTR, as well as at the other Federal agencies, so there is a good deal of informal coordination going on.

Mr. GUARINI. Thank you.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

I wanted to bring one more matter to your attention, Ms. Brunsdale.

Since the 1984 Steel Act was passed, the ITC has had the responsibility of certifying that the American steel industry is putting its net cash-flow back into capital improvements and is providing, I think it's 1 percent of its net cash-flow for worker retraining efforts.

I think basically your analyses have been quite good in both respects. In the last report, however, there was not a very extensive analysis of the industry's efforts on worker retraining, rather just an affirmation that the industry was complying.

Hopefully, we will extend those steel VRA provisions and the certification requirements this year. And I'm wondering, if that's the case, whether we can count on the ITC to do more thorough analysis or at least provide more backup information on which you base your decision?

Ms. BRUNSDALE. As you may know, we are doing that study at the request of the USTR, so it is the USTR that sets forth what they would like us to cover.

If we are requested by USTR or Congress to amplify any particular part of those reports or any other report we do, we would be most happy to comply.

Mr. PEASE. Thank you. I'm happy, given your answer, that USTR is following you and not preceding you.

Thank you very much.

Chairman GIBBONS. A question about Europe 1992.

If your reports are going to do us much good, they need to be timely. Do you plan to issue any interim report about what is going on in the EC that you observe?

What I'm thinking about is that our intelligence gathering agency, and you're part of it—I don't mean covert, but you're overt collections—are very important if we get them timely. If they're after the fact and the decisions are all made, it's not going to do us a heck of a lot of good except to know how to caress ourselves for the mistakes that have been made.

Ms. BRUNSDALE. Yes.

Chairman GIBBONS. What I'm asking you, is it possible to let us in as quickly as possible on what you're observing over there and what you're seeing over there rather than wait until we get it all bound in fine books that we'll never have a chance to read or it'll be too late to read?

Ms. BRUNSDALE. Chairman Gibbons, the smaller study on procurement is due June 15, and is right on schedule.

The larger study is due July 15. It was requested in early November, so it is at midpoint right now. And I might say that November to July represents a very short timeframe for a study as large as this 1992 report is. We are involving every part of our research capability in it at the Commission in order to to complete the two studies on time.

Chairman GIBBONS. What I'm urging you to do is if, in the process of you all developing your studies, if you see anything that you think needs immediate attention of the Congress or of the executive branch, that you get in contact with us informally and directly as rapidly as possible so that perhaps we could bring this to the attention of the community.

I have talked with community leaders time and time again, and they profess they do not want to do us any harm. But they will admit that they may inadvertently do some harm and, of course, I think they're capable of directly doing us some harm is we don't protest timely.

I'm worried in all of the 1992 that we may find out about it when it's over because their system is not as transparent as ours, and the way they make decisions is very unusual by our standards. So I am pleading you as the Acting Chairman with all of the Commissioners and with the staff, communicate with us when you've got something that you think is important. Perhaps we can take some preventive action that may save both sides some embarrassment in the future.

That's my message to you.

Ms. BRUNSDALE. I understand. And I think that's something we would like very much to be able to do. I will talk with my colleagues, and we will get together with staff and see if we can work out a procedure that responds to your request responsibly and on a timely basis.

Chairman GIBBONS. And I personally would welcome contacts about it because, oftentimes, while the staff and I agree on 99⅘ percent of the things we do, they're awfully busy, I'm awfully busy, we need some more direct rapport back and forth by telephone call, a short informal note, anything that would keep us posted would be most helpful.

Ms. BRUNSDALE. OK.

Chairman GIBBONS. Appreciate it. And I'm sure I speak for all the other members of the committee in that regard.

OK. Well, thank you all very much. Unless there are other questions——

Ms. BRUNSDALE. Thank you very much.

[Responses to questions of subcommittee members follow:]

RESPONSE OF ANNE BRUNSDALE, CHAIRMAN 1/
U.S. INTERNATIONAL TRADE COMMISSION
TO QUESTIONS FROM HOUSE WAYS AND MEANS SUBCOMMITTEE

QUESTIONS SUBMITTED BY HONORABLE SAM GIBBONS

QUESTION

1. The Committee on Ways and Means on occasion has requested special in-depth studies from the ITC on a variety of issues. It has been the Committee's experience that the internal review process for final approval of these studies is quite time-consuming, often adding as much as two months to the process. This is of particular concern when the Committee wishes a short turn-around time on a request. What is the process for review and approval of studies prior to their release? In a 6-month study, at what point is it subject to the first review -- i.e. how much time is available to staff to complete the first draft? Are there ways you can suggest to reduce the time required for internal clearance?

ANSWER

In the case of in-depth section 332 fact-finding studies, the Commission has a long-standing procedure calling for a two-stage review and approval prior to release of a Commission report. The office that drafts the report must first submit the draft to a staff level "senior review." This stage generally consists of formal review by trade experts outside of the drafting office and includes senior-level staff from our industry, economics, and legal/trade agreement staffs. This level of review is designed to ensure that the draft report is technically and substantively correct from the viewpoint of the experts in the various disciplines that typically are involved in trade issues.

The second stage of review/approval is at the Commissioner level. This review often identifies further problems with the substance of the report, such as seriously incorrect tables and inconsistencies between different sections. More frequently, the Commission review finds that while the answers to the questions posed by the requesters appear somewhere in the draft text, they are not highlighted in the presentation. The Commissioners and their staffs work with the professional staff of the Commission throughout the Commission review period to address any such problems.

1/ Pursuant to 19 U.S.C. 1331(a)(3), the views stated herein are those of Chairman Brunsdale and not necessarily those of the U.S. International Trade Commission.

The Commission, in whose name the reports are issued, was established and organized to make determinations and decisions in a collegial manner. It must have the opportunity to review all major investigative work products to ensure that they represent the views of the Commission prior to being released.

The time-frame for the above two-stage review is somewhat flexible and depends on the overall time provided for completion of the study, the Commission's overall caseload, and the complexity of the study. In most cases, however, the time provided for senior review does not exceed one week and Commissioner review does not exceed three weeks. The professional staff often continues its own internal review concurrently with the Commission's review process.

These times are necessary considering the multiple cases being considered by the Commission at any one time and the substantial effort required to thoroughly review the in-depth fact-finding studies. These times can be reduced to as short as three days and one week, respectively, in critical situations; however, these shortened time-frames are not practical as a general rule and work against production of the best final product. For a typical six-month study, the standard review times mentioned above mean that the drafting office must have the draft report completed some time in the second half of the fifth month of the study.

The Commission believes that the four-week review period now in place is essential for the major section 332 work of the Commission. However, the following are offered as ways in which the Committee might be provided with the information it requires in a more expeditious manner and the Commission staff provided more time to complete their research and analysis.

- In the case of high priority, critical issues requiring short turnaround, the Commission review periods can be reduced to the maximum extent feasible to ensure that staff has as much time as possible to prepare a draft report. This procedure in already in effect.

- The Commission currently reaches closure on its 332 reports through a serial voting procedure. On occasion, this procedure has delayed the final progress of reports through the Commission. I will explore possible revisions to our procedures with my fellow Commissioners, and I will also suggest to our Inspector General that she consider reviewing our 332 procedures from an independent perspective.

- Where the results of our studies are of a critical nature to the Committee, the Commission can keep Committee staff apprised of developments in the study through our Office of Congressional Liaison.

- Release of draft reports is not desirable since study findings can change considerably during the last several months or weeks of a short study. Also, it is not considered advisable to have multiple versions of a draft report circulating outside of the Commission since this can lead to confusion, to questions on why changes are occurring, to decisions based on preliminary findings, and other problems. The integrity and independence of our reports is a great asset that should not be compromised by early release.

- Commission staff currently provides a significant amount of information to the Congress through congressional mail and, more informally, through telephone contacts. Committee staff currently uses the informal telephone route for a significant number of minor requests. It has been a long-standing Commission practice to provide technical assistance where there is not a need for a full-scale investigation.

- Turnaround of section 332 studies might also be shortened through closer coordination of the Committee and Commission staffs prior to drafting of the 332 request. The purpose of such coordination would be to focus the study as narrowly as possible while still addressing the questions that the Committee wants answered. Such focusing might enable the Commission to avoid using staff resources to research issues that are not of critical importance to the Committee.

- As you are aware, public hearings are sometimes held in conjunction with 332 studies. At times, the hearing process, particularly for hearings held out of town, can divert staff resources from the study itself. We recognize the value of public hearings, however, explicit guidance in request letters regarding the need for public hearings, or lack thereof, would be very helpful.

- To a large extent the Commission has no control over the timing or the magnitude of the requests made by the President and the Congress. Because of this fact, the Commission can often be involved in major studies for one requester, and have additional requests made by another requester. For example, the Commission currently has 24 section 332 studies underway and 6 more are expected in the very near future. Some of the ongoing studies require a significant level of Commission resources, such as the President's request for an analysis of MTN tariff reductions and the congressional request for an analysis of the EC 1992 single market. With this number and magnitude of studies underway, it becomes difficult to provide rapid turnaround on additional requests.

QUESTION

4. You have provided Committee staff with information on recurring reports prepared by the ITC (e.g., subject, frequency, requester, recipients). In light of an anticipated increase in the ITC's workload in such areas as reports and support for the Uruguay Round, the Committee seeks your cooperation in exploring with Committee staff possible additional reductions in the number of recurring reports or in their frequency. [Note: The Commission recently dropped two recurring reports following an internal review.]

ANSWER

The Commission has reviewed the continued need for each of the recurring reports prepared by the Commission, as well as the possibility of reducing their frequency. We also initiated discussions with the Executive Branch and with the Ways and Means and Finance Committees concerning those studies done in response to their requests.

Two years ago, the Commission produced 14 recurring reports. Since then, three have been terminated -- brooms, mushrooms, and heavyweight motorcycles. In addition, the stainless and alloy tool steel report has been reduced from a quarterly-and-annual report to an annual report only.

The remainder of the recurring reports have continued with the format and frequency requested by the committees and the USTR. In addition, two new ones have been initiated -- (1) tungsten compounds, as the result of a Presidential proclamation, and (2) lamb meat, as required by the Omnibus Trade Act.

The Commission is pleased to cooperate with the Committee as it reviews the frequency and continuing need for these reports. Assistance and support will be provided when the Committee is ready to look at this issue.

QUESTION

5. Some members of the business community have raised concern about the limited extent of access by in-house counsel to confidential business information in Section 337 intellectual property rights cases. What are your criteria for granting such access? Would you please provide for the record a list of section 337 cases over the most recent three years and indicate in which cases a request for access by in-house counsel was made and either granted or denied?

ANSWER

As a practical matter, the Commission will not grant in-house counsel access to confidential business information unless the parties to the

investigation agree to such access. This practice stems from the Commission's policy of encouraging voluntary release of the confidential information (including financial information, production data, and trade secrets) by agreeing to protect such information to the extent possible from a firm's domestic and foreign competitors. The Commission therefore will release such information to in-house counsel over the objections of other parties only if the party requesting the release can demonstrate that it cannot adequately prepare and present its case without distributing confidential information to its in-house counsel. This stringent standard for the release of confidential information balances the need of the party seeking access in order to prepare its case adequately against the harm that disclosure would cause the party submitting the information and the interest of the Commission in maintaining confidentiality.

This standard was set forth by the Commission in Certain Rotary Wheel Printers, Inv. No. 337-TA-145, Memorandum Opinion (1983), and approved by the Court of Appeals for the Federal Circuit in Akzo v. U.S. International Trade Commission, 808 F.2d 1471 (Fed. Cir. 1986), cert denied 107 S.Ct. 2490 (1987). As noted by the Federal Circuit in the Akzo case, in order to complete section 337 investigations within the strict time limits of the statute, the Commission is heavily dependent upon voluntary submission of information. Disclosure of sensitive materials to a competitor would have a chilling effect on the willingness of businesses to provide essential information to the Commission in section 337 investigations. Id., 808 F.2d 1483. Accordingly, the Commission has taken a conservative position on the question of access of in-house counsel to confidential information in such investigations.

While no master list of requests for access to confidential information by in-house counsel is maintained at the Commission, requests for such access were filed in at least three investigations instituted since January 1, 1986.

As described below, in two cases the parties agreed to release confidential information to in-house counsel, while in a third case the judge did not authorize release to in-house counsel, but noted that parties who desired were free to exchange their own data among themselves.

In Certain Luggage Products, Inv. No. 337-TA-243, a request for access to confidential information by in-house counsel for a respondent was granted. No other parties objected to the request and respondent's counsel agreed to safeguards respecting the maintenance and return of confidential information. The protective order was also modified to require that parties seeking information from non-parties notify those non-parties that in-house counsel for the respondent in question would have access to confidential information subject to the protective order.

In Certain Dynamic Random Access Memories, Inv. No. 337-TA-242, complainant and certain respondents sought to modify the protective order to permit the use of confidential information obtained in the section 337 investigation in a related district court action and to disclose the information to their in-house counsel. The administrative law judge denied the parties' request noting that all the suppliers of information in the investigation had not been notified of the request, and that the Commission could not police disclosure of the information once it was made available in the district court proceeding. The judge also noted that the moving parties were free to agree among themselves to exchange the information that they each had produced during the investigation.

Most recently, in Certain Recombinant Erythropoietin, Inv. No. 337-TA-281, the complainant and respondent agreed to modify the protective order to permit access to confidential information to specified in-house counsel and in-house technical experts. The administrative law judge, however, required that confidential information produced by non-parties could not be disclosed to in-house personnel without the non-parties' permission. Subsequently, respondent sought to prevent disclosure of certain information in its files that it had obtained from a non-party to complainant's in-house personnel and to preclude in-house personnel from participating in inspections of the parties' respective plants. The judge refused to grant respondent's request in view of its prior agreement to modify the protective order. Nonetheless, the judge ultimately granted another motion by respondent and an intervenor to rescind the modification of the protective order, stating that there was no longer a need for in-house personnel to examine confidential information because the newly enacted Omnibus Act had limited the scope of the economic issues.

A list of all section 337 investigations instituted since January 1, 1986 is attached.

SECTION 337 INVESTIGATIONS INSTITUTED SINCE JANUARY, 1986

INVESTIGATION NOS.	CASE NAME
337-TA-237	MINIATURE HACKSAWS
337-TA-238	VACUUM CLEANER FOOT SWITCHES
337-TA-239	NON-CONTACT LASER PRECISION DIMENSIONAL MEASURING DEVICES AND COMPONENTS THEREOF
337-TA-240	LASER INSCRIBED DIAMONDS AND THE METHOD OF INSCRIPTION THEREOF

SECTION 337 INVESTIGATIONS INSTITUTED SINCE JANUARY, 1986

INVESTIGATION NOS.	CASE NAME
337-TA-241	PREFABRICATED BOW FORMS
337-TA-242	DYNAMIC RANDOM ACCESS MEMORIES, COMPONENTS THEREOF, AND PRODUCTS CONTAINING SAME
337-TA-243	LUGGAGE PRODUCTS
337-TA-244	INSULATED SECURITY CHESTS
337-TA-245	LOW-NITROSAMINE TRIFLURALIN HERBICIDES
337-TA-246	XENON LAMP DISSOLVER SLIDE PROJECTORS AND COMPONENTS THEREOF
337-TA-247	SICKLE GUARDS
337-TA-248	PLASTIC FASTENERS AND PROCESSES FOR THE MANUFACTURE THEREOF
337-TA-249	AIRCRAFT CARBON DISC BRAKES AND REPLACEMENT CARBON DISCS
337-TA-250	VENTILATED MOTORCYCLE HELMETS
337-TA-251	ELECTRONIC CHROMATOGRAM ANALYZERS AND COMPONENTS THEREOF
337-TA-252	HEAVY DUTY MOBILE SCRAP SHEARS
337-TA-253	ELECTRICALLY RESISTIVE MONOCOMPONENT TONER
337-TA-254	SMALL ALUMINUM FLASHLIGHTS AND COMPONENTS THEREOF
337-TA-255	GARMENT HANGERS
337-TA-256	CRYOGENIC ULTRAMICROTOME APPARATUS AND COMPONENTS THEREOF
337-TA-257	ELECTRONIC WALL STUD FINDERS

SECTION 337 INVESTIGATIONS INSTITUTED SINCE JANUARY, 1986

INVESTIGATION NOS.	CASE NAME
337-TA-258	MOLDABLE/EXTRUDABLE POLYETHERESTERAMIDE COPOLYMERS
337-TA-259	BATTERY-POWERED SMOKE DETECTORS
337-TA-260	FEATHERED FUR COATS AND PELTS
337-TA-261	INK JETS PRINTERS EMPLOYING SOLID INK
337-TA-262	HARD SIDED MOLDED LUGGAGE
337-TA-263	OFFICE FILING CABINETS
337-TA-264	MAIL EXTRACTION DESKS AND COMPONENTS THEREOF
337-TA-265	DENTAL PROPHYLAXIS METHODS, EQUIPMENT AND COMPONENTS THEREOF
337-TA-266	METHOD OF MAKING PLASTIC FILM WITH PROFILES AND OPENING MEANS FOR BAGS AND BAGS WITH COLOR LINE TRADEMARK
337-TA-267	MINOXIDIL POWDER, SALTS AND COMPOSITIONS FOR USE IN HAIR TREATMENTS
337-TA-268	HIGH INTENSITY RETROREFLECTIVE SHEETING
337-TA-269	PICTURE IN A PICTURE VIDEO ADD-ON PRODUCTS
337-TA-270	NONCONTACT TONOMETERS
337-TA-271	BUOYANT METALLIZED BALLOONS
337-TA-272	ELECTRONIC CHIME MODULES
337-TA-273	CELLULAR MOBILE TELEPHONES AND SUBASSEMBLIES
337-TA-274	TOGGLE CLAMPS FOR CLAMPING FIXTURING, PROCESSING, ORIGINAL EQUIPMENT MANUFACTURING

98-164 O - 89 - 2

SECTION 337 INVESTIGATIONS INSTITUTED SINCE JANUARY, 1986

INVESTIGATION NOS.	CASE NAME
337-TA-275	NONWOVEN GAS FILTER ELEMENTS
337-TA-276	ERASABLE PROGRAMMABLE READ ONLY MEMORIES, COMPONENTS THEREOF, PRODUCTS CONTAINING SAME AND PROCESSES FOR MAKING SUCH MEMORIES
337-TA-277	MARINE AUTOMATIC PILOTS
337-TA-278	PROGRAMMABLE DIGITAL CLOCK THERMOSTATS
337-TA-279	PLASTIC LIGHT DUTY SCREW ANCHORS
337-TA-280	HIGH GEOMETRIC SURFACE AREA CATALYSTS AND COMPONENTS THEREOF
337-TA-281	RECOMBINANT ERYTHROPOIETIN
337-TA-282	VENETIAN BLIND COMPONENTS
337-TA-283	ELECTRONIC DART GAMES
337-TA-284	ELECTRIC POWER TOOLS, BATTERY CARTRIDGES AND BATTERY CHARGERS
337-TA-285	CHEMILUMINESCENT COMPOSITIONS AND COMPONENTS THEREOF AND METHOD OF USING THE SAME
337-TA-286	TRACK LIGHTING SYSTEM COMPONENTS INCLUDING PLUGBOXES
337-TA-287	STRIP LIGHTS
337-TA-288	STRAIGHT KNIFE CLOTH CUTTING MACHINES
337-TA-289	CONCEALED CABINET HINGES AND MOUNTED PLATES
337-TA-290	WIRE ELECTRIC DISCHARGE MACHINING APPARATUS AND COMPONENTS THEREOF
337-TA-291	INSULATED SECURITY CHEST II

SECTION 337 INVESTIGATIONS INSTITUTED SINCE JANUARY, 1986

INVESTIGATION NOS.	CASE NAME
337-TA-292	METHODS OF MAKING CARBONATED CANDY PRODUCTS
337-TA-293	CRYSTALLINE CAFADROXIL MONOHYDRATE
337-TA-294	CARRIER MATERIALS BEARING INK COMPOSITIONS TO BE USED IN A DRY ADHESIVE-FREE THERMAL TRANSFER PROCESS

RESPONSES TO QUESTIONS OF MR. FRENZEL
REGARDING SECTION 337

QUESTION

1. Would you please explain the standard used by the ITC in determining whether to grant in-house counsel access to the confidential record in section 337 cases?

ANSWER

As a practical matter, the Commission will not grant in-house counsel access to confidential business information unless the parties to the investigation agree to such access. This practice stems from the Commission's policy of encouraging voluntary release of the confidential information (including financial information, production data, and trade secrets) by agreeing to protect such information to the extent possible from a firm's domestic and foreign competitors. The Commission therefore will release such information to in-house counsel over the objections of other parties only if the party requesting the release can demonstrate that it cannot adequately prepare and present its case without distributing confidential information to its in-house counsel. Therefore, the Commission's stringent standard for the release of confidential information balances the need of the party seeking access in order to prepare its case adequately against the harm that disclosure would cause the party submitting the information and the interest of the Commission in maintaining confidentiality.

This standard was set forth by the Commission in Certain Rotary Wheel Printers, Inv. No. 337-TA-145, Memorandum Opinion (1983), and approved by the Court of Appeals for the Federal Circuit in Akzo v. U.S. International Trade Commission, 808 F.2d 1471 (Fed. Cir. 1986), cert denied 107 S.Ct. 490 (1987). As noted by the Federal Circuit in the Akzo case, in order to complete section 337 investigations within the strict time limits of the statute, the Commission is heavily dependent upon voluntary submission of information. Disclosure of sensitive materials to a competitor would have a chilling effect on the willingness of businesses to provide essential information to the Commission in section 337 investigations. Id., 808 F.2d 1483. Accordingly, the Commission has taken a conservative position on the question of access of in-house counsel to confidential information in such investigations.

QUESTION

2. Is it not true that the current ITC practice is to grant in-house counsel access only in extraordinary cases, while routinely granting it to retained counsel? Why is this distinction made?

ANSWER

The protective orders entered in section 337 investigations grant access to confidential business information to the parties' outside counsel provided they agree to use such information solely for purposes of the investigation and not to disclose such information to persons who are not signatories to the protective order. In-house counsel may move to obtain access under the balancing test set forth in Certain Rotary Wheel Printers, Inv. No. 337-TA-145, Memorandum Opinion (1983). In practice, however, in-house counsel have not been granted access to confidential information unless the parties have agreed to such access because the moving parties have failed to demonstrate that they cannot adequately prepare and present their cases in the absence of such access.

While retained counsel are generally employed by firms that represent clients only in particular matters for which they are retained, in-house counsel are permanent employees of a party and are generally involved in the day-to-day operations of that party. As the Court of Appeals for the Federal Circuit noted in Akzo v. U.S. International Trade Commission, 808 F.2d 1471, 1483 (Fed. Cir 1986), "[o]bviously, where confidential material is disclosed to an employee of a competitor, the risk of the competitor's obtaining an unfair advantage may be substantially increased." Accordingly, firms are less likely to provide confidential information voluntarily where disclosure of that information is not limited to retained counsel, but is extended to employees of their competitors. Because of the strict statutory time limits in section 337 investigations, the Commission relies upon the voluntary submission of confidential data in section 337 investigations to develop adequate factual records.

Furthermore, in section 337 investigations, in-house counsel often are foreign attorneys employed by foreign businesses who reside outside the United States and are not admitted to practice in this country. The Commission therefore may have little recourse against such attorneys should they disclose confidential information in violation of a Commission protective order. Thus, domestic firms, be they complainants or third parties who often provide important information in section 337 investigations, may be particularly reluctant to disclose their confidential information to the in-house counsel of foreign firms.

QUESTION

3. Is it not true that with the amendments to section 337 under the Omnibus Trade Act, section 337 cases are often just like patent cases in the courts? And is it not true that the district courts routinely grant in-house counsel access to confidential information in patent infringement suits? Why should a different standard apply at the ITC?

ANSWER

While the Omnibus Trade Act eliminated the injury requirement for patent-based section 337 investigations, there are still substantial differences between such investigations and patent infringement actions in the district courts.

Unlike district court infringement actions, which can and frequently do take many years to complete, section 337 investigations must be completed in one year (or in more complicated cases, in eighteen months). To meet the one-year deadline, both discovery and a hearing on the merits before an administrative law judge must generally be completed within approximately seven months of the institution of a section 337 investigation. Given the limited time available for completion of discovery and a hearing in these investigations, the Commission relies upon voluntary compliance with requests for information from third parties that possess relevant information. If the parties were repeatedly forced to petition the Commission for enforcement of subpoenas in district court, important information would likely be obtained too late in many proceedings to allow for follow-up discovery or even for inclusion in the record made before the administrative law judge. In contrast, in district court actions, the parties have considerably more time in which to conduct discovery and obtain subpoena enforcement prior to trial.

Section 337 investigations also differ from district court infringement actions in that the complainant in a section 337 investigation must establish that the accused products are imported and that there exists an industry in the United States which exploits each of the patents at issue in the United States. No such requirements exist in district court infringement actions. Thus, there are still some additional elements that must be satisfied in the limited time allotted in section 337 investigations.

While it may be true that in-house counsel frequently obtain access to confidential information in district court actions, such access is not automatic. Indeed, the standard adopted by the Commission in Certain Rotary Wheel Printers, Inv. No. 337-TA-145, Memorandum Opinion (1983), for determining who shall be afforded access was derived from federal court practice. As indicated above, there are differences between section 337 proceedings and district court

proceedings -- most importantly, differences in the time frames involved and the concomitant need for voluntary cooperation -- which militate against a rule which would generally make confidential information in section 337 proceedings available to in-house counsel.

QUESTION

4. If interested parties are unwilling to cooperate in ITC proceedings, can the ITC administrative law judge assume the facts to be established adversely to the non-cooperating party? Isn't this enough to make the parties cooperative?

ANSWER

The Commission's rules provide that the administrative law judge can assume facts to be established adversely to a party that fails to obey a discovery order. Interim Rule 210.36(b), 53 Fed. Reg. 33067 (Aug. 29, 1988). While the prospect of such sanctions may often be sufficient to coerce a party into providing information which it would otherwise refuse to disclose to another party's in-house counsel, such sanctions are not available against third parties that are often asked to provide sensitive technical or competitive information in section 337 proceedings.

Furthermore, under the amendments to section 337, the Commission may now enter limited exclusion and cease-and-desist orders against named respondents based on their default. However, the complainant must still establish a case of violation, based on substantial, reliable and probative evidence, in order to obtain a general exclusion order which would apply to all infringing imports regardless of source. Therefore, if a complainant is not content with limited orders directed against the named respondents, it cannot simply rest upon the respondents' failure to cooperate.

Finally, third parties with relevant information are often competitors or customers of the named parties and would likely be reluctant to provide confidential information knowing that it will be seen by in-house personnel. In the past, intense negotiations have often been required to convince third parties to provide information even though they were assured that disclosure would be limited to the parties' outside counsel, experts, and Commission personnel. As a practical matter, enforcement of a subpoena issued to a third party through a district court action brought by the Commission may come too late in a section 337 investigation to be of use to the parties in preparing and presenting their evidence.

QUESTION

5. How does the ITC's practice with regard to access to the confidential record for in-house and retained counsel in section 337 proceedings differ from antidumping and countervailing duty proceedings? Isn't the data supplied to the ITC in AD and CVD cases highly sensitive, and yet in-house counsel get access?

ANSWER

As explained above, the Commission has not granted in-house counsel access to confidential business information in section 337 investigations unless the parties agree to such access. This was also the Commission's practice in Title VII investigations until the decision of the U.S. Court of Appeals for the Federal Circuit in United States Steel Corp. v. United States, 730 F.2d 1465 (Fed. Cir. 1984). That decision established in the Commission's reviewing courts the practice of releasing confidential pricing and cost of production information in Title VII investigations to in-house counsel not involved in competitive decision-making. The Commission subsequently adopted that practice at the administrative level in Title VII investigations.

Pursuant to the amendments in the Omnibus Trade Act, in Title VII investigations the Commission is now required, subject to certain limited exceptions, to release all confidential information under protective order to representatives of the parties, including in-house counsel provided they satisfy the standards of the U.S. Steel decision. Although the Omnibus Trade Act amended section 337 to provide specifically for the designation and protection of confidential information, no requirement of access for in-house counsel to such information in section 337 investigations was included in the amendments.

QUESTION

6. Wouldn't allowing in-house counsel access to this information under the same guidelines as it is provided to retained counsel further Congress' goal under last year's Omnibus Trade Act of eliminating unnecessary barriers to the use of section 337, by allowing parties to reduce legal expense through use of their in-house counsel?

ANSWER

Although granting in-house counsel access to confidential information might well reduce the cost of litigating section 337 investigations in some cases, it is unclear whether such access would substantially

reduce expenditures in most investigations. Few parties would be likely to handle section 337 investigations totally in-house; rather, the vast majority of parties would continue to rely primarily upon outside counsel to handle these investigations. Indeed, many parties, particularly those of relatively small size, do not even have in-house counsel or, to the extent they have such counsel, they are not generally trained in conducting intellectual property or trade litigation. Moreover, it is likely that most parties would continue to hire outside technical experts in patent-based investigations even if their in-house counsel were routinely granted access to confidential information.

To the extent that the amendments to section 337 have made it easier to obtain relief by eliminating the injury requirement in cases based on statutory intellectual property rights, less confidential information should be necessary in such investigations. However, under the newly articulated standard for domestic industry, complainants still will have to submit information about their investments in plant, equipment, engineering, licensing and research and development in cases based on statutory intellectual property rights. Since most of the confidential economic data which respondents previously had to provide are no longer required in such cases, complainants may be increasingly reluctant to disclose their confidential information to respondents' in-house counsel.

Finally, insofar as companies that possess relevant information, whether named as parties or not, object to providing information to other firms' in-house counsel, it may become increasingly difficult to obtain the cooperation of these companies voluntarily. Therefore, if in-house counsel were routinely granted access to confidential information, it could be become more difficult to compile a complete record within the time limits of section 337 investigations as motions practice relating to discovery and subpoena enforcement increases. This would also result in additional expense for the parties.

Chairman GIBBONS. Keep up the good work.

Next we have the U.S. Trade Representative's office, Joshua Bolten, General Counsel.

Mr. Bolten, while we know you from your previous assignment here on the Hill and from your fine service in the Senate, we want to welcome you here and express our desire to work closely with you and with all of your folks at the U.S. Trade Representative Office.

As you know, particularly here in the House, we feel like your agency is more than just a part of the executive branch. It is our input into the executive branch. We are very sensitive to your role and we want to enhance your role in the decisionmaking process in the executive branch. And anything that we could do in that regard I think will help the administration of the entire U.S. trade policy, and that's our objective.

So we welcome you, and we welcome you particularly because of the experience that you've had.

STATEMENT OF JOSHUA BOLTEN, GENERAL COUNSEL AND ACTING DEPUTY U.S. TRADE REPRESENTATIVE, ACCOMPANIED BY MIKE DOYLE, ASSISTANT TRADE REPRESENTATIVE FOR ADMINISTRATION

Mr. BOLTEN. Mr. Chairman, I thank you for that warm welcome, and I appreciate your not holding my previous service in the other body against me over here.

Chairman GIBBONS. We believe in redemption. [Laughter.]

Mr. BOLTEN. And, Mr. Chairman, I also appreciate your remarks about the close relationship between the U.S. Trade Representative's Office and the Congress and this committee in particular. I can tell you that in my 2 short months over at the agency, that that is a relationship that is held in the highest regard and for which the entire agency is very appreciative.

Mr. Chairman, I have with me this morning Mike Doyle, who is the Assistant U.S. Trade Representative for Administration. He is an extraordinary resource for our agency and makes our budget go much farther than it otherwise might.

You have my prepared statement for the record. I know you have time constraints and I'll summarize it orally.

Mr. Chairman, as with trade policy in general, USTR, the agency, faces enormous challenges and opportunities in this coming year. The budget request we are presenting today provides the tools to meet the challenges and to seize the opportunities. Our request is that you authorize appropriations totaling $16,830,000 in fiscal year 1990. That's $1.6 million above the current year's base of $15.2 million.

Most of our budget, as you know, Mr. Chairman, pays for staff, which we propose to increase from 146 to 152 in fiscal year 1990. The increases we're requesting amount to about 11 percent in dollars and about 4 percent in staff.

Last year, USTR requested and received an authorization level that was the same as the year before. So if you average out the request we're presenting today with last year's budget, you get an average growth of about 6 percent in dollars and 2 percent in staff.

If you look back over the last 5 years, we've had modest growth amounting to about 5 percent per year in budget and 2 percent in staff.

Of the $1.6 million increase we're requesting this year, $1.4 million is intended as a real program increase targeted for additional costs of completing the Uruguay round negotiations. We budgeted the money for additional staff, travel to and from Geneva which, as this committee is well aware, is the locus of the negotiations, and some additional overhead costs at our permanent mission in Geneva. We have also budgeted for some increased costs associated with public hearings on the Uruguay round, and a modest increase in representation funds from $69,000 to $89,000.

Our budget also includes about $130,000 of mostly nonrecurring expenses for upgrade of our computer and telecommunications security.

Mr. Chairman, we are seeking what is in effect a modest increase in a modest budget. We believe it is a solid budget. Given the scope of its responsibilities, USTR is quite small, but we think appropriately so. USTR's mandate, which is set out in the Trade Act of 1974, and was amended by this committee most recently last year in the 1988 Act, is to develop trade policy, coordinate its implementation, conduct negotiations. In short, to lead the administration on trade policy.

That leadership mission is best served by a small cadre of highly skilled professionals. My 2-month experience at USTR tells me that that's exactly what the agency is.

Deep levels of specific expertise and staff support are not and should not be lodged at USTR. We draw heavily, and I think effectively, on the much greater resources in other agencies, especially Commerce, State, Treasury, Agriculture, and notably the International Trade Commission which Chairman Brunsdale has laid out some of the details of that cooperation here. I would just like to say publicly at this point that Ambassador Hills and USTR are very grateful for the cooperation and deep levels of support that we do get from ITC in the Uruguay round and other matters.

In setting up USTR over 25 years ago, this committee, I think, recognized that the coordination and policy development role is best performed without cumbersome bureaucracy.

Mr. Chairman, the budget we are presenting today is well suited to the mission I have just described and we hope the committee will adopt it.

That concludes my remarks and I will be pleased to take your questions.

[The statement of Mr. Bolten follows:]

TESTIMONY

OF

JOSHUA BOLTEN

GENERAL COUNSEL AND ACTING DEPUTY U.S. TRADE REPRESENTATIVE

Mr. Chairman, it is a pleasure to appear before you this morning to present the Fiscal Year 1990 budget authorization request for the Office of the United States Trade Representative. This committee has always been most supportive of the work of the USTR.

The request asks for a two-year authorization with a sum of $16,830,000 in FY 1990. The FY 1991 level would be determined in the next appropriation cycle. Our request includes a higher limit of representation funds to be consistent with the FY 1990 budget request of $89,000. It continues the no-year spending authority of up to $1,000,000 as a method for insulating the USTR from swings in currency exchange rates which affect the budget of our Geneva, Switzerland office.

The request represents an increase of $1,601,000 over the FY 1989 appropriation level of $15,229,000. The recurring portion of the request is $16,700,000. We are also requesting a total of 152 positions, which is six above the current level of 146.

In percentage terms, the request represents a gross increase of eleven percent over the FY 1989 base in dollars and a four percent increase in staffing. We believe these amounts will be sufficient to support the work we have planned for the next fiscal year.

USTR Capacity To Handle Increased Workload

I know this committee has some concern about the capacity of USTR to handle the work contained in the 1988 Trade Act for which it is assigned responsibility, the follow-through required in implementing forcefully the U.S.-Canada Free Trade Agreement, and still complete the Uruguay Round of multilateral trade negotiations. How can this be done by an agency of only 146 permanent staff -- or even a staff of 152, if our FY 1990 appropriation request is approved by the Congress?

There is no doubt that the USTR has a full plate of challenging work over the next few years. As envisioned by Congress, our role is to develop and coordinate implementation of U.S. international trade policy. We are confident that we can get the job done. Let me cite a few important reasons.

- First, USTR is the nerve center of a sizeable interagency trade community -- numbering over 500 people in over 20 agencies -- who participate actively in the interagency trade policy process. That interagency group (complemented by an extensive network of private sector advisors) represents a substantial reservoir of support to USTR which is tapped issue by issue on a daily basis through the Trade Policy Staff Committee and its 40 sub-committees. It has quite a degree of elasticity -- in responding to USTR needs.

- Second, the trade agencies frequently detail staff to USTR directly to work on issues on a longer-term basis -- typically for one year or more. Presently, USTR has 25 details on-board from 10 agencies. 17 of them are non-reimbursable. Shortly, we will begin a round of discussion with key trade agencies to seek increased support from them for the Uruguay Round in FY 1990 and FY 1991.

- Third, the Congress has provided significant support for the Uruguay Round to other agencies. Commerce got $4 million and 72 positions in the FY 1988 cycle to support USTR in the Round. USDA's Economic Research Service had $750,000 earmarked in the FY 1989 cycle for support to USTR.

- Fourth, USTR is a policy shop, whose priorities and efforts shift somewhat as the Administration's policy priorities shift. The enormous energy that went into working with the Congress on the 1988 Trade Act and U.S.-Canada Free Trade Agreement, will this year be applied to their implementation. We don't intend to let any balls drop.

- Fifth, USTR has become more productive in the last few years. This committee has supported appropriations that allowed us to upgrade the amount and quality of our computer, telecommunication and office automation assets. USTR professional staff take full advantage of this environment to maintain their responsiveness to the demanding level of work.

- Last, USTR has asked and will ask for additional funds and positions when we think they're absolutely necessary. That is the case this year. However, USTR prefers to remain as small as possible. We think this is consistent with our mission and philosophy. The essence of USTR's mission is to lead and coordinate other trade agencies in the development of sound trade policy and the implementation of effective trade negotiations.

Overall, USTR is in good shape to handle the future. Let me turn now to a specific discussion of our FY 1990 request.

Program Increase -- Uruguay Round

USTR has approached Uruguay Round staffing with a belief that, in the early going, it is most effective and efficient to minimize the build-up of Geneva staff. Given the wide range of non-tariff issues as compared with the Tokyo Round, Washington-based negotiators and experts have gone to Geneva as required to move the process along. This approach, thus far, has served U.S. trade interests well.

In Washington, we established a team structure organized around the 15 negotiating groups. Each team has been headed by a USTR policy coordinator and a chief negotiator. Some of the negotiators are from other trade agencies. The work has been carried out under the direction of USTR's chief coordinator for the Uruguay Round. 105 meetings were held in Geneva in FY 1988. Additional effort has been spent visiting key capitals to inform and consult with other governments whose support we need in Geneva. This strategy has proved effective, but the pace of work at the technical level has to increase significantly to support a successful conclusion by 1990.

We expect a significant increase in the pace of activity in Geneva by mid - FY 1989 and FY 1990. Our commitment of additional staff in Geneva will be guided by the level of activity in the 15 individual negotiating groups during FY 1989 and FY 1990. On average, groups met six times each during FY 1988. We expect the average to be seven meetings in FY 1989 and nine in FY 1990. We expect the length of these meetings to increase from five to seven days in FY 1989 and ten in FY 1990. In addition, we expect a substantial increase in informal negotiating sessions (bilateral, plurilateral).

We expect a further increase in the pace of our consultations in key capitals to support U.S. objectives in the Round, as well as periodic regional briefings of U.S. embassy staffs. Other cost increases will stem from public hearings as part of the mandate to consult extensively on Uruguay Round objectives and strategy. We will also intensify our consultations with our private sector advisory committees.

Because of our increased responsibilities and staffing needs arising from the second half of Uruguay Round negotiations, USTR is requesting an additional $1,379,000 and six positions for FY 1990. $130,000 is non-recurring in FY 1991. Staff costs would total $743,000 inclusive of benefits. Some additional man-years will be posted in Geneva; some will be staff on extended per diem.

We estimate presently that five professional man-years will work on the tariff negotiations and seven on non-tariff issues (e.g., agriculture, services, intellectual property). We expect most of the tariff professionals to be drawn from Commerce (ITA), the ITC and other trade agencies. We expect the non-tariff staff to be drawn from USTR and other trade agencies. Four man-years would be support staff. The Round is scheduled to conclude during 1990. Staff will be needed to wrap up the Geneva effort after it ends -- hopefully no later than the end of FY 1991.

Other non-staff costs include $216,000 for travel and transportation; $270,000 for other services; $130,000 for equipment; and $20,000 for representation. The travel and transportation increase is due to several factors. First, it offsets partially the loss of funds from the State Department/International Organization conference account. We had hoped that State would find some way to restore the FY 1986 level of funding. State has not yet been able to do so. State provided $335,000 in FY 1986, $175,000 in FY 1987, and about $180,000 in FY 1988 for USTR delegates. Second, it reflects costs associated with the movement of staff to Geneva. Third, the increase also reflects the assumption that while USTR will have additional staff at post in Geneva for 1990, we will still require additional funds for travel between Washington/Geneva and other key capitals to further U.S. Uruguay Round objectives.

The other services increase of $270,000 ($255,000 recurring; $15,000 non-recurring) is composed of $100,000 for additional trade data and analytical support to negotiators needed during the critical negotiating phases: $135,000 is for overhead costs associated with the buildup in Geneva including, principally, additional charges from the State Department; $20,000 is needed to cover increased transcriber costs associated with the public hearings on the Uruguay Round. $15,000 (non-recurring) will be needed to add seven workstations in Geneva.

USTR proposes three limited equipment initiatives to secure the adequate protection and communication of sensitive trade policy information during the second phase of the Uruguay Round. The amount requested totals $130,000 of which $115,000 will be non-recurring:

-- $50,000 in non-recurring funds are requested to equip selected senior staff in Washington and selected offices with secure voice units (10). In Geneva, we intend to equip certain professional staff with secure voice units (3) because of the greater threat level. These units are in addition to the eight units we will have in place with FY 1988/1989 funds.

-- $30,000 in non-recurring funds are requested for one secure portable computer and communications systems that protect classified and sensitive materials transmitted to USTR Washington; and an NSA authentication/encryption package that protects dial-in lines to the unclassified computer. This item is for USTR's unclassified system; it is to meet the requirements of the Computer Security Act of 1987.

-- $35,000 in non-recurring funds are requested for one Tempest personal computer in Washington; three additional printers, two shredders and ten switchboxes will also be needed to reflect increased activity levels by 1990. $15,000 in recurring funds will be needed for maintenance of the equipment.

FY 1990 Adjustment To Base

$258,000 is requested to cover adjustments to the FY 1990 recurring base of $15,193,000 requested for FY 1989. The only item covered in the requested increase is the additional Foreign Affairs Administrative Support costs to USTR which will result from the State Department policy change in treating FAAS costs. That amount is $274,000. This change is proposed to take effect in FY 1990. USTR expects to absorb a portion of this cost and other pay and inflation related costs within its base.

Conclusion

This budget request will allow us to accomplish our objectives, while remaining lean and efficient. We will succeed in the Uruguay Round and in other key areas of trade policy only if we have a coordinated interagency effort that draws efficiently on the capable resources lodged not only at USTR, but also in the other agencies with trade expertise. We are looking forward to a continuation of a high level of support from and cooperation with these agencies.

Mr. Chairman, this concludes my prepared testimony. I will be happy to answer your questions.

Chairman GIBBONS. All right, sir.

I realize that your budget had to go through the Office of Management and Budget, and that you are reporting in line with the administration's policy. And, of course, that's one of your responsibilities.

Because your budget is small and we are going to take a very detailed look at it, we may make some adjustments in it, either up or down, or some way.

One of the serious challenges your office always faces is a challenge for turf, and I hate to put it in that kind of gross terms. But you have a trouble within the administration because you're small; you have a struggle within the Congress because you're small. And a few years ago, in order to try to remedy that situation, you published a pamphlet called "A Preface to Trade." And that did as much as I have ever seen to try to establish what your role was and how trade policy was developed in the U.S. Government.

One of my wishes to you is that you get that book out and update it, polish it up, and make the necessary changes in it and republish it, because I think it is important for your agency to state your role and state it clearly and forcefully so that everyone who you works with understands your role.

And so I hope that you will get that out, look at it, see what changes need to be made in that book, "A Preface to Trade," and publish it. Because unless you take a stand, you are going to be swallowed up by those other departments down there, instead of leading those other departments as we want you to.

So it is just more than pride in the booklet that was put out, but a desire to get the aims of "A Preface to Trade" reinforced in the minds of all the rest of the agencies down there that I urge you to take another look at it and to republish it and bring it up to date, and to widely distribute it to Members of Congress, to the trade community, and to the other members of the administration down there so that they will know where you stand and what your role is.

It is not a matter of "tooting your own horn," it's a matter of just laying out in clear intelligent language how the process is supposed to work.

Now, I hope you'll take that into consideration. I'm worried how you're going to perform the toughest negotiating job in trade that we've ever undertaken with the tools that you have available to you. If you fail, it will not just be your agency to fail, it will not just be this administration failed, it will be whole world failed.

GATT and the whole system that GATT stands for is on trial around the world, and particularly in this country. And I don't intend to let you just hang there and not be able to do the job by the restraint on the number of people that can be employed usefully in the job.

So we will be talking to you in many different ways to find out how we can do it. I don't think your budget is well enough prepared to undertake the kind of negotiations that I look at in the Uruguay round.

If we're going to leave Agriculture just to the agricultural people, we will never solve that agricultural problem. If we're going to leave services just to the services people, we'll never solve that job.

It's got to be a lean, mean but strong agency that carries it out. And I realize it takes time to train negotiators, it takes time. At the salaries we pay in this Government, it's hell to keep anybody around.

I'm very aware of what happened to the last two people in your job. I wish you the same kind of good fortune. But, you know, no reflection upon them, they followed a wise course, but we are not supposed just to be a training ground for that type of purpose. And we need to get these salaries straightened out.

I don't know whether anybody else up here voted for the pay raise besides me or not, but I figure I could say that without flinching. So, good luck to you. I don't have any questions for you because I realize OMB has got you muzzled and I won't ask you to perjure yourself.

Mr. BOLTEN. Mr. Chairman, I believe I can comment without perjuring myself, and I don't consider myself muzzled.

Chairman GIBBONS. Sure. OK.

Mr. BOLTEN. First, I'm familiar with "The Preface to Trade," to which you referred. I think it's something we definitely ought to look at updating. We'll work with your staff on that.

On the general point about the other agencies understanding the role of USTR, for the most part, in my experience so far, they do. Most importantly, the President understands it. Ambassador Hills has a very good working relationship with the President. As long as the President understands the importance of the USTR's role, we feel that that is the most important part.

Chairman GIBBONS. When is the first Economic Conference that the President is going to attend? I think it's in July, isn't it?

Mr. BOLTEN. I believe it's in July, yes, sir.

Chairman GIBBONS. Has she got a ticket on the President's plane?

Mr. BOLTEN. Mr. Chairman, I don't know whether tickets are required on the plane.

Chairman GIBBONS. Well, an invitation is required. That's going to be the test. If she doesn't get invited.

Mr. BOLTEN. Well, Mr. Chairman, she has had a good working relationship with the President and, as you know, she did go to Canada with the President.

Chairman GIBBONS. Well, I don't doubt that, I don't doubt that. But if we have an Economic Conference and the Trade Representative isn't invited, I will know how the policy is working. I won't need anybody to read my lips.

Mr. BOLTEN. Mr. Chairman, on the general point about the Uruguay round, we feel we are well staffed up. Roughly one-third of our people in the entire agency, in one way or another, are working intensively on the Uruguay round. We are getting good support from the other agencies, where there's well over 100 people in the various agencies directly involved in the Uruguay round and, I assume, a factor of several times that backing those people up.

So we feel we are well geared up on the Uruguay round. You will have a chance to look at our resources yourself in Geneva. I know you'll be watching the negotiations very carefully. We feel we are in good shape to deal with the Uruguay round.

Chairman GIBBONS. So you've got about 50 or 60 people working on the Uruguay round, 40, 50, 60, how many?

Mr. BOLTEN. In USTR, it may be a little bit less than that, of people who are spending a substantial part of their time on the Uruguay round. But you don't need to look just at the Uruguay round office or at some of the specific bilateral offices to find people who are working on the Uruguay round.

Chairman GIBBONS. I understand that they're scattered all through the other agencies.

Mr. BOLTEN. Yes, and throughout USTR.

My deputy, for example, the Deputy General Counsel, spends a substantial part of his time as the lead negotiator in the intellectual property negotiations.

Chairman GIBBONS. How many people do you have on Europe 1992?

Mr. BOLTEN. Mr. Chairman, we have one person who is the coordinator for 1992, so he spends most, if not all, of his time on that issue. There are a number of other people who back him up. The Europe office in general has, Mike, I believe five people.

Chairman GIBBONS. Five professionals.

Mr. BOLTEN. There is a whole interagency task force also that backs them up.

Chairman GIBBONS. Well, you know, I have never had to do what I am talking about, but if you can just understand Europe, much less follow it, it is going to take a lot of people. The decisionmaking process is opaque, at the best. I don't know how you can—we have got one Ambassador in Brussels, and he is the State Department man, is that right?

Mr. BOLTEN. That is correct.

Chairman GIBBONS. Do we have anybody from the USTR office in Brussels?

Mr. BOLTEN. Yes, sir.

Chairman GIBBONS. Full time?

Mr. BOLTEN. We have a full-time USTR staffer at the USEC mission in Brussels. In addition, a great number of the people in the mission there—which is the mission to the EC as distinct from the Embassy to Belgium, a large portion of them are working on the 1992 issue.

Chairman GIBBONS. Now, I first visited that mission in 1970, and they are still in the same place that they were in 1970. They didn't have much room then, and how, you know, has that mission grown any in size? The community has grown in size and in complexity.

Mr. BOLTEN. I don't know, Mr. Chairman, what their size has been. I was there yesterday and can tell you the quarters are a little bit cramped.

Chairman GIBBONS. Cramped—that's an understatement. I'm not just talking about cramped—I'm talking about the size of the staff to follow the European Commission—just the Commission while there are 17 secretaries of something or other in the Commission, and I don't see how you follow one of them, much less 17, with the staff you've got.

Then you have got the counsel and they're perhaps the most important of all because they make the final decisions, and that's a

floating operation, and then you've got the European Parliament with nine political parties, and it floats all over Europe.

I just don't know how you follow what the decisionmaking over there—you have got Uruguay round, you have Europe 1992—they are both highly important, and I don't see anywhere in the budget of the United States that we are really gearing up to those two big opportunities—to those two big challenges.

I know we're all psychologically geared up for it, but I don't think we're geared up staffwise for it.

Mr. BOLTEN. Mr. Chairman, we think we are. We have got good people in a lot of different agencies working on it, and they are working cooperatively together so that we don't need to have a duplicative function.

Chairman GIBBONS. How many have the Japanese got working on it?

Mr. BOLTEN. I don't know sir.

Chairman GIBBONS. That's not a military secret, is it? I mean—I am worried that we are going to end up with 1992 and say, man, that's an event that we saw coming. They publicized it. They told us they didn't want to hurt us. We could have intervened. U.S. International Trade Commission will publish a nice booklet and tell us what happened to us, and we will sit here and say why didn't we do something?

Now, I just don't see our Government getting geared up for it. I don't see, you know, everyplace I go in the private sector they are worried about it. They don't know what's going to happen. But I don't see that level of concern in our Government.

Mr. BOLTEN. Mr. Chairman, there is a high level of concern. We are in the process of beefing up our resources to deal with 1992 and the Uruguay round. There was testimony before the committee yesterday on how we are dealing with it.

We feel that we have got the resources to do the job. If, as time goes on, we feel we are not getting the resources, you will hear from us.

Chairman GIBBONS. Well, just put me down as being skeptical into what's going on. I don't want you to think that I am skeptical of your integrity, or anything else. I am just skeptical that we are really being prepared for this operation, and it is going to come right back to you, your agency, because of the emphasis we put on all of this.

Chairman GIBBONS. I've taken up an awful lot of time.

Mr. PEASE. Mr. Chairman, thank you very much. Mr. Bolten, we are delighted to have you here, and I'd like to begin by saying that I have for a long time been an admirer of the U.S. Trade Representative Office.

I think it is one of the best agencies in the Federal Government. I think it is a compliment to the USTR office that Members of Congress keep wanting to thrust more money and more staff members on USTR, that we seem unable to understand how you can get everything done that you get done with your staff.

I think you have stated the philosophy that underpins the smallness of the agency. This is a correct philosophy in that you are much better off if you don't have very many bureaucratic responsibilities.

So I urge you to stick to that. There has been some concern as, however, both domestically and internationally, that we have our trade functions scattered among several agencies.

As you know, there was a push a couple of years ago for a Department of Trade. Inevitably, I think, if there were a Department of Trade, you would have to have the bureaucratic, functioning elements in the Department as well.

Do you think, that, if that were a Department of Trade, without reference to who would dominate such an agency whether it be USTR, or the Secretary of Commerce—the sort of leadership/planning function that the USTR currently serves would be served as effectively as it is now?

Mr. BOLTEN. I'm not sure, Mr. Pease. I think there is a good risk that it could be lost if it were all combined into one agency. The USTR in a sense has an advantage in its small size in serving the coordinating role and not being as much a competitor of some of the other Cabinet agencies, and I can tell you that one particular benefit of the small size at USTR is that it is a very highly skilled group of professionals who have worked together for a long time, and all of whom have direct access to Ambassador Hills.

In that sort of circumstance, as opposed to a large bureaucratic cabinet organization, I think the coordinating role can be served much more effectively.

Mr. PEASE. I would just make the observation that if there were a Department of Trade, almost surely the coordinating function that USTR currently serves would be under the responsibility of an assistant secretary who would be one of four or five assistant secretaries.

I think almost inevitably the coordinating role would be downplayed somewhat.

Let me ask you about steel. Ambassador Hills testified before us last month. She said that she had created an interagency task force to formulate the administration's steel policy, and she hoped that there might be some status report to Congress by mid-March.

Mid-March has come and almost gone. Can you tell us anything about what is happening in that area?

Mr. BOLTEN. Yes, sir. There is a normal inter-agency review proceeding through the TPSC [Trade Policy Staff Committee] and TPRG [Trade Policy Review Group] structure. We are in that process right now. We have requested public comment through a Federal Register notice. Those comments, I believe, are due in early April.

Our principals have been meeting a great deal with various of the interest groups involved, with the steel industry, with steel users, with labor; we have been trying to make the process as open as possible to the various interests involved.

It has not at this point been raised to the Cabinet level, because we want full input from the interests involved and we want the full interagency process to work. I would expect that it will be possible to raise the issues involved in formulating the steel policy to the Cabinet level within a few weeks.

Mr. PEASE. When would you expect or guess that the administration might announce its steel policy?

Mr. BOLTEN. I don't know, Mr. Pease, exactly when that is going to be. We suffer the tension between wanting to provide a full discussion internally and consulting with the industry and with Congress, and understanding that if we are to have the policy in place well before the September 30 deadline, we need to move rapidly.

So that tension is well understood. I can't give you a specific time as to when the President will have made a final decision.

Mr. PEASE. Thank you. As you know, our trade deficit with Japan has been very large over the last several years. It declined in 1988, but not appreciably, and the analysts claim that it is unlikely to drop very much more in the years ahead.

The question is, does USTR feel that an annual trade deficit with Japan in the range of $50 to $60 billion is sustainable?

Mr. BOLTEN. Well, Ambassador Hills and the agency don't feel that it is what we want. We certainly want to see that deficit come down. Whether it is sustainable as a matter of economic fact and reality, I don't know for sure, and I'm not sure economists know for sure.

But it is certainly true that it is a very high priority of USTR and this administration to bring that number down.

Mr. PEASE. With the one or two notable exceptions—for example, the semiconductor agreement—the previous administration generally followed a policy of rules orientation; that is, changing the rules to open up trade, or open up the Japanese market, making it more possible for us to sell a whole range of products.

That has not very often produced results, and I'm curious to know whether USTR now is thinking of continuing it's rules oriented approach, or whether there has been any thought to giving more emphasis to a results oriented approach in dealing with Japan.

Mr. BOLTEN. Well, Mr. Pease, I'm not sure you need to distinguish between rules and results. In many cases we have attacked frontally the rules in the Japanese system, and not gotten specific results out of them; that has been a major disappointment.

But what we are seeking is fair access to the market. Perhaps we can get that fair access to the market by going behind the rules, and saying to the Japanese, what's really going on here, let's get that fair access to the market. Let's find the hidden ways in which the United States is not getting fair access. That is the way we would prefer to proceed.

Mr. PEASE. Do I take it then from what you say that if in your judgment you are able to accomplish good access by American companies to the Japanese market, that you would be satisfied even if the deficit remains at $50 to $60 billion a year?

Mr. BOLTEN. It would be a great disappointment for the deficit to remain that high. But our principal goal is to get the fair access to the market that we think we deserve.

Mr. PEASE. Then you would claim that the $50 to $60 billion deficits are the fault of our industry being uncompetitive, rather than the Japanese closing us out of their markets, is that correct?

Mr. BOLTEN. Mr. Pease, there could be a number of reasons why the deficit remains sticky, other than a lack of competitiveness on the U.S. side. But our principal focus, at USTR certainly, will be to

see to it that if there is a deficit, it has nothing to do with unfair trade barriers.

Mr. PEASE. A couple of years ago there was a lot of attention paid in Japan, and some outside of Japan, to what was called the Mayakawa report, which suggested that the Japanese needed to make some changes in their economy, on a macroeconomic basis, if they were really to open up their markets and deal effectively with their large trade surpluses.

Does the USTR have a judgment as to what has happened to the Mayakawa report, and how much of it has been implemented?

Mr. BOLTEN. Mr. Pease, if I might, I'd like to submit something to you for the record, specifically on the Mayakawa report. We have had some disappointment with the macroeconomic changes in Japan, but some pleasure as well.

Over the last couple of years, there has been an effort on the Japanese part to ignite more domestic demand and promote at least some increase in imports from the Third World. The results are not entirely impressive, but as to specific implementation of the Mayakawa report, let me ask to give you something for the record.

Mr. PEASE. All right. I appreciate that. I raise the point because even if we have access to their markets, if there is not the demand, if the Japanese still discourage or don't encourage, for example, housing for their own citizens, we are unlikely to be able to sell many products to Japan, and I am curious to know whether USTS along with its efforts to enhance market opportunities, the USTR intends to press Japan on macroeconomic factors that contribute to their trade surplus.

Mr. BOLTEN. We will provide that, Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

[The following was subsequently received:]

The Commission and the Report

In October 1985, then-Prime Minister Nakasone asked a former governor of the Bank of Japan, Haruo Maekawa, to recommend responses to emerging economic challenges. Japan's new wealth and overwhelming external surpluses required an updating of the economic principles that had guided it since the end of the war.

The Maekawa Commission issued its main report in April 1986. Subsequently it became a permanent committee under the Prime Minister's office, and in 1987 and 1988 issued follow-up reports which amplified but did not fundamentally alter the original report.

Point by Point Evaluation

The basic (1986) report grouped its recommendations around six major goals, discussed below. The succeeding Maekawa II and Maekawa III reports added recommendations in the areas of deregulation, land policy, manufactured imports, work hours, and increasing ODA.

-- Expand domestic demand to reduce reliance on exports as the economy's engine. Encourage housing construction, private consumption, and infrastructure development.

Following an expansionary fiscal package in mid-1987, domestic demand has taken over as the chief motor of the economy as the external surplus has begun shrinking slowly. Domestic demand rose 5.1% in 1987, close to 7% in 1988, and is forecast to rise 4.7% in 1989. However, consumer spending has grown more slowly than GNP in most years since 1984, and residential construction, after an initial surge, has slowed once again owing to exceedingly high land prices.

-- Restructure industry to focus on domestic demand and to increase direct investment abroad. This section also called for more imports of agricultural goods.

Results: Largely because of the strong yen, industry is concentrating on meeting and stimulating domestic demand, though it is far from neglecting exports. Two projections show the difficulty of accurately assessing the restructuring trend: one research institute sees manufacturers increasing their dependence on the domestic market to 79.3%; but a majority of Japanese companies plan to maintain or increase exports in 1989. Overseas investment has strengthened dramatically (direct investment was $34.1 billion last year)

-- Increase manufactured imports by reducing tariffs and nontariff barriers, streamlining the distribution system, and phasing out many domestic cartels. Internationally, this section called for increased technology exports, more cooperative ventures, and less stress on market share.

Results: In response to the strong yen, imports, especially of manufactures from elsewhere in Asia, have risen significantly. But, Japan's manufactured imports relative to income continue to lag far behind those of the other industrialized economies. In 1988, they stood at 3.2% of GNP compared to 7.4% in the U.S. and 10.5 % for West Germany. The proportion of manufactures in Japan's total import bill has doubled from 25% of all imports to close to 50% since 1982. Yet, the ratio of manufactured imports to GNP remains the lowest among industrialized countries. While this has reflected in part real increases in manufactured imports, it also reflected the drop in Japan's bill for oil imports as the yen has strengthened. Moreover, the increases in manufactured imports have occurred from a very low base. In some cases, lack of government movement to streamline distribution, particularly in consumer goods, has led importers to create their own distribution channels. The increasingly apparent difference between Japanese and foreign prices, however, has encouraged the formation of pressure groups advocating distribution reform. Changing the entrenched Japanese focus on market share will take time, and there is no clear evidence of a shift yet.

-- Stabilize exchange rates and liberalize capital markets, and accept a global financial role. This section stresses diversification of financial instruments and expansion of secondary markets.

Results: Tokyo has in general accepted its responsibility to stabilize exchange rates in the G-7 process, through both short-term market intervention and expansion of demand. Financial market liberalization was already under way following the 1984 yen-dollar accord. Foreign firms' participation is much greater, the range of financial instruments is broader, and the yen is on the road to full internationalization.

-- Promote international cooperation and contribute to the world economy, on a scale consistent with Japan's new position. Increase ODA, lead an attack on the LDC debt problem, promote scientific/cultural exchanges, and support the Uruguay Round of multilateral trade negotiations.

Results: In all of these areas, Tokyo has made good progress, both absolutely and as a percentage of GNP. There is room for improvement in the quality of aid meted out by the understaffed aid bureaucracy and the imaginativeness of participation in the Uruguay Round.

-- Pursue flexible fiscal and monetary policies while reducing the budget deficit. Reform fiscal policies to reduce excessive incentives to save. This section called for tax reform, deregulation, and ending reliance on deficit financing.

Chairman GIBBONS. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman. Thank you, Mr. Bolten. Mr. Bolten, we have just concluded a major trade bill, and we have concluded negotiations with Canada. Why couldn't the USTR reduce its request and reduce the number of personnel now, instead of asking for increases?

Mr. BOLTEN. Well, Mr. Pease—Mr. Schulze—we could——

Excuse me, Mr. Schulze. USTR devoted a fairly large quantum of resources to working with the Congress on the trade bill, and working in the negotiations on the United States-Canada Free Trade Agreement, as you pointed out.

We now have as large or probably larger job in impiementing the trade bill and implementing the Canada Agreement. So in many cases, the people who worked on those two projects over the last 2 years are now shifting over and working on implementation of both the trade bill and the Free Trade Agreement.

Mr. SCHULZE. So you say it is harder to implement than it is to negotiate and develop legislation? It takes more personnel?

Mr. BOLTEN. Certainly with respect to the trade bill, the answer is yes.

Mr. SCHULZE. The USTR did not advise us of that when we were discussing the trade bill. They didn't come in and say that, for example, during consideration of the Canadian Agreement.

You would think that if we were lowering barriers and facilitating trade, we should use fewer personnel. You are saying that is not true?

Mr. BOLTEN. No, sir. I'm not saying that is not true. What I am saying is that the Canada Agreement itself calls for a large measure of ongoing consultation, further negotiations, working out some of our residual tariff and nontariff barrier problems.

Mr. SCHULZE. So a thorough job was not done on the Free Trade Agreement.

Mr. BOLTEN. A thorough job was done, Mr. Schulze. But there is a great deal yet to be done, as this committee recognized at the time you were considering the agreement. The Free Trade Agreement also set in process—set in motion—a process of close consultation between our two Governments that is also time-consuming.

Mr. SCHULZE. Does that burden fall mainly on the USTR, or does part of that go to Commerce, or to State, or are there other personnel who take part in those negotiations?

Mr. BOLTEN. There are other personnel who can and do.

Mr. SCHULZE. Can you be a little more specific on the additional positions—what their jobs would be, what they would be doing, where they would be located, and so forth?

Mr. BOLTEN. The six additional positions we're requesting in this budget? Let me ask Mr. Doyle to respond to that.

Mr. SCHULZE. OK.

Mr. DOYLE. A few of those, Mr. Schulze, would be in Geneva.

Mr. SCHULZE. A few?

Mr. DOYLE. A few. Well, three to six, if you want to put a number on it.

Mr. SCHULZE. An additional six positions at costs?

Mr. DOYLE. The total is about $700,000 in personnel and benefits. And those personnel costs also cover some of the costs we might have to absorb if we put other agency staff over there.

We are in the midst of discussions right now.

Mr. SCHULZE. Just for general purposes, that is a little more than $100,000 per employee. Is that how you figure it?

Mr. DOYLE. Well, the staff who are posted in Geneva are much more expensive than those domestically.

Mr. SCHULZE. Could you give me a ballpark figure of what is much more expensive?

Mr. DOYLE. About $150,000, if you take a per-person cost of the persons in Geneva.

Mr. SCHULZE. Out of the six you are saying three of them would be in Geneva?

Mr. DOYLE. Three of them would be in Geneva, and the other three in Washington.

Mr. SCHULZE. And they would be specifically doing what?

Mr. DOYLE. We plan one in agriculture, one in services, and one perhaps in intellectual property, to add to the staff we have.

Mr. SCHULZE. They will be negotiators?

Mr. DOYLE. Yes.

Mr. SCHULZE. Are we not able to do a sufficient negotiating job now?

Mr. DOYLE. It goes back to Mr. Bolten's point that we think we are stretched; we think this is a really modest increase, and we think our base is going to be used to implement forcefully the new trade act and the CFTA.

Mr. SCHULZE. How many people were there in the USTR's office when the Tokyo round was negotiated? Do you have any idea?

Mr. DOYLE. I am not certain, Mr. Schulze, but I think counting all the staff that was detailed, it may have been in the vicinity of about 100 at the conclusion of the round. I could be wrong, I think it was about 100.

Mr. SCHULZE. Well, you are convinced you need this much money, are you?

Mr. DOYLE. Yes, sir.

Mr. SCHULZE. Thank you. Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Guarini.

Mr. GUARINI. And as I understand it, we have one person in Brussels who is a staff member, and he is the person from USTR that is keeping watch on what is happening with 1992, is that correct?

Mr. BOLTEN. That is correct, Mr. Guarini.

Mr. GUARINI. Of course, when he has a cold, or isn't well, or is on vacation, there is nothing going on in Brussels, then, as far as USTR is concerned?

Mr. BOLTEN. The real bulk of the work on 1992 and related issues is done by State Department personnel at the USEC mission.

Mr. GUARINI. All right. Now, then USTR in Geneva doesn't spend any of its time? Or what percentage of its time does it spend on 1992? Of the staff you have in Geneva?

Mr. BOLTEN. I don't know, Mr. Guarini. I think it is a relative small portion. I could ask Mr. Doyle to expand on it, but I don't think we could give you anything precise.

Mr. GUARINI. Probably negligent?

Mr. BOLTEN. Probably small, that is correct.

Mr. GUARINI. What does Japan have in Brussels? Macy's always knows what Gimbel's does, and vice-versa. What do we know what our major competitor is doing in Brussels?

Mr. BOLTEN. Mr. Guarini, to the extent we know, if I may, I will provide that for the record.

Mr. GUARINI. Do you know how many people they have there?

Mr. BOLTEN. No, sir. I do not.

Mr. GUARINI. Well, let me ask you—how many people do they have in Geneva?

Mr. BOLTEN. I will be glad to provide that for the record as well.

Mr. GUARINI. But you don't know right now?

Mr. BOLTEN. No, sir.

Mr. GUARINI. Is the cost of living in Geneva the reason why we keep so few policymakers in Geneva? Is the cost factor the highest cost of living the reason why we are thin on our staff in Brussels and Geneva?

Mr. DOYLE. I can't speak to Brussels, Mr. Guarini. As far as Geneva goes, it is a consideration. In designing the management strategy for the Uruguay round, we hoped and did in the first step keep as many people in Washington as possible.

Because it is expensive to put them there.

Mr. GUARINI. Now I understand over at the Senate hearing, that you asked for—originally—the OMB for $21 million, and not the $16 million that you have now in OMB's budget. Is that correct?

Mr. BOLTEN. That is correct.

Mr. GUARINI. Now, there must have been a perception on the part of USTR, which is a very efficient organization which we are very proud of, that a great deal more was needed because of what is going on in global economics, particularly Uruguay round, and the Canadian Agreement, the omnibus trade bill, and we have a free trade agreement with Israel, and we are very concerned about 1992.

There must have been a need for quite a few additional people and support mechanism within USTR that was turned down. Is that right?

Mr. BOLTEN. Well, Mr. Guarini, let me ask Mr. Doyle to expand on the differences between our requests——

Mr. GUARINI. Because I take an opposite view of my friend from Pennsylvania. I think that what you people are doing is one of the most important jobs we could be addressing in America.

And not to have the right kind of personnel and policymakers and equipment and people in place would be a tragic mistake when we view that our overall budget is $1 trillion, and we would be penurious at something that is so important to all of us. Mr. Doyle?

Mr. DOYLE. Mr. Guarini, there are a few assumptions built into that request to OMB that have changed. One important one, for example, was that there was over $1 million included in the request that was tied to the payments to panelists that are required under chapter 19 of the US CFTA.

Mr. GUARINI. Does that million dollars—that was the currency swing money, that was something else?

Mr. DOYLE. Right. This would be the money that is paid to the private sector individuals who are selected for the panels under chapter 19.

The implementing law for the US CFTA authorized USTR to request that money. We prudently put in a request to OMB consistent with that legislation.

Mr. GUARINI. Are these panels very important to doing the kind of job that has to be done?

Mr. DOYLE. They are essential. During the course of the budget cycle, the budget decision was that the Commerce Department would request those funds. Over $1 million was added to the International Trade Administration's request, which was submitted to the Congress to cover that cost.

So that's almost a quarter, over a quarter, of what we had asked for in the OMB number.

Mr. GUARINI. All right. So $1 million is going to be——

Mr. DOYLE. $1.5 million, to be precise.

Mr. GUARINI. Is going to be taken care of by the Commerce Department. So we are not short on that.

Mr. DOYLE. Right.

Mr. GUARINI. What about the other $3.5 million?

Mr. DOYLE. The other key assumption was that we assumed, because there is generally a tough fiscal environment that we are all aware of in the Government, we made a worst case assumption in terms of the level of support that we would be getting from the other agencies.

In the course of discussions during the winter, in the course of discussions that we are going to have over the next couple of months with other key trade agencies, including the ITC, that testified before us, we expect to ask them to provide us substantial levels of support.

We have every reason to believe that we are going to get it, which will allow us to finish the round and use our base to implement the Trade Act and the CFTA.

Mr. GUARINI. So what you are saying is that you are really not self-sustaining, that you are counting on the understanding and charity of other agencies to give you the back-up information and support mechanism that you need?

Mr. DOYLE. Well, I wouldn't use the word charity, but the answer fundamentally is yes. I think it goes back to the design of the USTR, and the presumption that we should really depend on the other agencies for a lot of support.

We think it has worked that way well in the past. We think it will work well over the next couple of years.

Mr. GUARINI. All right. But the most crucial and critical time of our trade history—global economics is changing the quickest. The USTR is in the middle of the most important negotiations that we will probably have in the next 10 or 20 years, and you are dependent upon the cooperation of other agencies, because you don't have the wherewithal within your own structure. All right?

Mr. DOYLE. I don't think even if we had the additional resources we could really execute without the special kinds of expertise we have residing in the other agencies. As we move through the next 2 years, we have to depend upon those.

Mr. GUARINI. So you have no control over the personnel, and you have the influence of those other agencies in your agency, because of the material information and personnel comes from those other agencies, they will have an influence on your decision and your policymaking because I would assume that you would have outside interference, if someone disagreed with what USTR was doing. So that you don't have complete latitude with your own personnel, and your own philosophy, but rather are dependent upon outside sources.

I think that is unfortunate. No matter how cooperative people are, there is turf, there is jurisdiction, there is jealousy of the jurisdiction, and sometimes there is not the full cooperating that you would expect. I see it in Congress. I do not think the executive department is any different.

I think to be hostage to that kind of a situation is unfortunate when you have a very important mission.

Mr. DOYLE. I would just offer the observation that in general that may be true. At least in terms of our experiences in gaining support from other agencies, as long as we provide leadership, I think it has been there, Mr. Guarini.

Mr. GUARINI. Well, I just hope you are right, because I do not think it is the right way to go.

Do you view your job in USTR as just opening markets, or do you view it as also giving advice and input as to how our trade deficit should be reduced?

Mr. BOLTEN. We view our job as both, Mr. Guarini.

Mr. GUARINI. And then if we are talking about reducing trade deficits, how do you address that part of it? By making recommendations as to what is needed for us to be more competitive? Do you get into the education and into the antitrust suggestions and into the macroeconomics? I mean, are these part of the issues that you address within USTR?

Mr. BOLTEN. Yes, sir, they are, although the U.S. Trade Representative's office leadership role on some of those issues is not nearly as clear as with respect to market opening.

Mr. GUARINI. Well, then I suggest you should have the tools to do the job.

I thank you very much for the good job you are doing with limited resources.

Mr. BOLTEN. Thank you, sir.

Chairman GIBBONS. All right. Any more questions?

Thank you.

Mr. BOLTEN. Mr. Chairman, thank you.

Chairman GIBBONS. Now, the U.S. Customs Service.

Mr. von Raab, we welcome you. You may proceed as you wish.

STATEMENT OF HON. WILLIAM VON RAAB, COMMISSIONER OF CUSTOMS, U.S. CUSTOMS SERVICE

Mr. VON RAAB. Mr. Chairman, I have a rather extensive statement that I would ask that you accept for the record.

Chairman GIBBONS. It will be put in the record, yes.

Mr. VON RAAB. I know time has passed. I have a short statement that I would appreciate your putting in the record. I would like to read it because it does have a few points that are of significance.

Chairman GIBBONS. Just go right ahead and give it as you wish. That is all right, we have time if you do.

Mr. VON RAAB. You have my whole day, sir. Do you serve lunch at 1?

First of all, let me introduce my colleagues here. At my immediate left is Lynn Gordon, who is our Assistant Commissioner for Commercial Operations. At her left is Sam Banks, who is our Assistant Commissioner for Inspection and Control. And at my right is Bill Riley, who is our comptroller.

Thank you for this request to appear before you today.

As you are aware, the President's 1990 budget proposes freezing at 1989 levels the aggregate spending of domestic programs not directly associated with one of his broad initiatives. Although most of our programs are included in this category, the President has emphasized that the freeze is flexible, allowing some programs to increase while others are reduced.

During last year Customs collected over $17 billion in revenue, cleared 348 million persons, and processed nearly 9 million formal merchandize entries. The latter constituted over a 10-percent increase over the past year.

In the drug enforcement arena, we seized 140,000 pounds of cocaine, a quantity almost 60 percent above the previous year, 1,300 pounds of heroin, nearly 1 million pounds of marijuana, and nearly 100,000 pounds of hashish.

Mr. Chairman, events on various continents of the globe in recent times suggest that in many cases, happily, the world was settling down to the business of economics and trade—not war. For the Customs Service, this means that there is a need to prepare for continuous change in the trading community. Not only is there a need, but there are opportunities tied to catalytic changes.

As we prepare for the change, we will continue to enforce the laws on the books, collect the required duties and fees, monitor quotas and collect trade statistics. But we must and will also make adjustments to meet the challenges that are rapidly growing and changing global trade environment requirements.

Some of the adjustments we are making and are planning to make are modernization schemes embodied in our so-called Day One and McKinsey Initiatives. These are strategic blueprints which look beyond current practices to those changes needed for the future.

In looking to the future, we have the benefit of some 200 years of historical experience which allows us to view specific categories which need change to accommodate the future. For example, we still require too much paperwork despite successes in our paperless processing initiative. Thus, we are continuing to move forward with our EDIFACT automated invoice and electronic funds transfer projects.

We are also working to bring other agencies into line with the need for automated entry filing.

A second category of change is in the area of human intervention. It is my belief that the trade flows of the future should not be

impeded by people moving piles of paper, but rather processed automatically. In order to accomplish this, advance notice of what cargo is coming to our shores is needed.

We have already begun to attack this problem in our preclassification and binding rulings program, which allow for more timely dissemination of information in a more efficient and uniform fashion.

Another area of change which I feel is necessary—and I think the trade community agrees—is the legal framework within which Customs operates. Presently we are operating under a set of concepts that served us well as a developing nation in 1789 and up to a point, maybe in the 1950's. But in order to make a new system work and prepare ourselves for the explosion of trade that we expect, we need to exchange 200 years of archaic laws for a modern set of Customs rules which reflect the economic and technological dynamics of our times. In my mind, this is not just a requirement, but a necessity.

Mr. Chairman, this committee can help us move on needed changes, as you have increasingly expressed your interest with respect to Customs' commercial operations and cargo facilitation efforts. With that in mind, I would like to briefly touch on a few specific commercial operations and cargo facilitation initiatives in which you have expressed interest.

Last year, we briefly discussed the major challenge to the Customs commercial side; that is, facilitating cargo while maintaining high degrees of compliance levels in increasingly complex, busy, and changing trade environment. We are continuing to meet this challenge through modernization and the increased use of selectivity supported by our automated commercial system.

This system and its component modules are designed to improve the quality and uniformity in the processing of imported merchandise. By automating our entry processing system through this system, we are now more efficiently processing entry-associated paperwork. As we advance the system, we are looking to eliminate as many paper forms and requirements as possible.

Our computer system is now capable of communicating directly with private industry and receiving entry documents electronically. In fact, at this juncture, nearly 70 percent of all entry documents filed with Customs are filed electronically. This is compared with about 6 years ago in which none were.

Our computer advancements have also moved us closer to completion of an automated clearinghouse, or automated funds exchange system, where Customs duties can be paid electronically. As we dovetail these different advancements, we move closer to our goal of a paperless, more useful and less expensive, less burdensome Customs entry system in the future.

It is important to say here that the automation strides we have made have moved us to a leadership role in international community in the development and testing of electronic data interchange. One day this will result in the total transmission of invoice and other entry-related data by electronic communications between nations.

I would point out that we do have a test, as a matter of fact, with the European Community involving a number of multinational

companies in which we are going to try to move this kind of data internationally.

This year we will also have dramatic changes in Customs' commercial activities. The Canadian Free Trade Agreement, referred to in the previous hearing, and the harmonized tariff system have now been implemented, along with a number of innovative Customs programs such as our new binding rulings program.

While we have done much to prepare for these changes, we expect the early months of 1989 to be a learning process for the trade community and government alike as we adjust to the new developments.

A particular concern to many in Congress is the implementation of the Canadian Free Trade Agreement. This agreement implemented on the second of this year is far reaching and breaks new ground in removing barrier to trade in such areas as tariffs, investments, services, and a host of others. Under this agreement, tariffs on goods originating in the United States and/or Canada will have been systematically eliminated by 1998.

In order for goods to qualify under this agreement, they will have to meet criteria spelled out in a set of "Rules of Origin" which will preclude third countries from obtaining the benefits of the agreement simply by passing their goods through the United States or Canada.

At the end of 1988 in preparation for the agreement's implementation, Customs did conduct training for its field personnel and the Canadian and American trade communities. Of course, another area of concern to the Congress is the replacement of the Tariff Schedules of the United States, known as TSUS, with the harmonized system. Implementation of this change has been a major priority for Customs.

The harmonized system provides the United States and other trading nations with a greater uniformity in the classification of goods. The preparatory efforts toward implementing included nationwide training for all Customs personnel as well as for other Government agencies, the importing public, and various trade associations.

Moving on to another Customs effort of interest to the committee, you will recall that the 1989 Customs authorization bill contains a requirement to implement a rulings uniformity program. In response, Customs developed and implemented a classification rulings program on the first of this year. Under this program, for most requests we will issue a binding ruling within 30 days. The issue classification will be binding.

Finally, on the commercial side, I would like to inform the committee of a Customs test initiative which we call triangular processing, or more aptly free market processing, which began in October 1988. Basically this program allows for entries and entry summaries to be electronically filed at locations different from where the merchandise arrives. In effect, this test would free the trade and the transportation pattern from the existing Customs locations, which for the most part were established in 1789.

To date, the results have been very encouraging. In fact, many members of the trade community would like to participate in a

slightly expanded version of the original test, a wish which Customs is now considering.

At this point, Mr. Chairman, a word is in order regarding funding for Customs commercial operations.

As you know, Congress funded our commercial operations from the user fee account in 1989. This year, the administration again will send to the Hill legislation to correct the Customs user fees' incompatibility with GATT. Basically the legislative proposal will seek a transaction-based fee to replace the current ad valorem fee. You will recall that the administration sent forward such a bill in May 1988, but Congress did not consider it.

On the enforcement side, the most visible mission element, and a major priority of this administration, continues to be narcotics enforcement. A tremendous responsibility, this requires staggering resources and patient and careful judgment as to how these resources are used.

As we become more successful in air and marine interdiction based on resources we have received over the last few years, we are seeing an increase in narcotics moving to our shores by way of containers in cargo vessels. This being the case, container enforcement strategies must command a heightened attention operationally. In turn, more resources are required.

With this requirement in mind, the new administration in its 1990 request has included $28 million for a new containerized cargo initiative. These funds will allow for 550 additional officers and would significantly increase the level of intensive examinations of cargo containers for illegal drugs.

This effort will take place in part with additional inspectors as well as canine teams. To the extent this initiative calls for 550 inspectors to be added to our cargo enforcement efforts, these resources can also be viewed as also providing better service to the importing public. I say this because the inspectors' efforts will permit Customs to further expedite the release of low-risk shipments and more quickly accomplish the examination and release of all shipments thought to be high-risk.

During 1988 Customs financial enforcement efforts, which are also supplemented in this budget, produced a significant seizure increase over the year before. The new budget request adds $3 million for money laundering investigations. All totaled the Bush budget for Customs requests $442 million for drug enforcement.

Mr. Chairman, I would like to remind the committee that the Customs Service began celebrating its bicentennial this past summer. The original Customs districts and ports of entry were established by the Fifth Act of Congress on July 31, 1789 in response to the urgent need for revenue collection under the Tariff Act of July 4, 1789.

Even though Customs' basic mission has remained the same over the past 200 years, changes in the size and makeup of the international trade community have resulted in a significant expansion of Customs and its responsibilities.

We believe we have enjoyed considerable progress and support over the years in both the enforcement and commercial areas. As such we have achieved much upon which we can capitalize with a little patience and judgment.

98-164 O - 89 - 3

The Customs practices we know today were born of necessity in the mists of history in a developing nation. Though I am a fan of history and believe in the importance of what history teaches, I know now that for the Customs Service, it is time in many ways for us to be liberated from our history and our outdated practices and move to new ways of doing business. In short, it is time to move on. Thank you very much.

[The prepared statement follows:]

STATEMENT OF WILLIAM VON RAAB

COMMISSIONER OF CUSTOMS

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I AM PLEASED TO COME BEFORE YOU TODAY TO DISCUSS THE FY 1990 CUSTOMS BUDGET REQUEST AND HOW CUSTOMS INTENDS TO MAKE USE OF ITS RESOURCES.

AS YOU ARE AWARE, THE PRESIDENT'S FY 1990 BUDGET PROPOSES FREEZING, AT FY 1989 LEVELS, THE AGGREGATE SPENDING OF DOMESTIC PROGRAMS NOT DIRECTLY ASSOCIATED WITH ONE OF HIS FIVE BROAD INITIATIVES. ALTHOUGH MOST OF OUR PROGRAMS ARE INCLUDED IN THIS CATEGORY, THE PRESIDENT HAS EMPHASIZED THAT THE FREEZE IS FLEXIBLE, ALLOWING SOME PROGRAMS TO INCREASE WHILE OTHERS ARE REDUCED.

WE EXPECT THAT FINAL DECISIONS ABOUT WHETHER TO INCREASE OR DECREASE SPECIFIC PROGRAMS WITHIN THIS FREEZE CATEGORY WILL BE DETERMINED THROUGH TOP LEVEL DELIBERATIONS AND NEGOTIATIONS BETWEEN THE ADMINISTRATION AND CONGRESS.

TODAY, WE ARE PREPARED TO DISCUSS A NUMBER OF INITIATIVES, PROGRAM REFORMS AND/OR REDUCTIONS TO 1989 SPENDING LEVELS THAT WERE PRESENTED IN THE BUDGET SUBMITTED IN JANUARY.

IT SHOULD BE EMPHASIZED THAT THE PRESIDENT HAS NOT PROPOSED THAT FUNDS BE APPROPRIATED FOR THESE PARTICULAR ADJUSTMENTS. THEREFORE, OUR DISCUSSION MUST BE VIEWED AS PROVIDING THE COMMITTEE WITH INFORMATION ON "CANDIDATE" AREAS WHICH COULD BE INCREASED OR DECREASED WITHIN THE CONTEXT OF THE OVERALL FREEZE.

FOR THE DRUG ENFORCEMENT PROGRAM, A BUSH PRIORITY, WE PROPOSE A LEVEL OF $442 MILLION TO PATROL OUR BORDERS VIGOROUSLY AND TO INTERDICT DRUGS IN TRANSIT TO THE UNITED STATES.

THE DRUG ENFORCEMENT REQUEST IS SLIGHTLY LOWER THAN FY 1989 BUT IN FACT INCLUDES SUBSTANTIAL PROGRAMMATIC INCREASES IN SEVERAL KEY AREAS, INCLUDING CONTAINERIZED CARGO INSPECTION, MONEY LAUNDERING ACTIVITIES, AND ENFORCEMENT SYSTEMS. THE REASONS FOR THE DECLINE ARE SEVERAL: 1) SIGNIFICANT ONE-TIME COSTS OF FY 1989'S DRUG BILL THAT NEED NOT RECUR IN FY 1990; 2) THE TRANSFER OF RESPONSIBILITY FOR SEEKING THE ORGANIZED CRIME DRUG ENFORCEMENT (OCDE) APPROPRIATION TO THE DEPARTMENT OF JUSTICE; 3) THE TRANSFER OF CUSTOMS E-2C'S TO THE COAST GUARD; AND 4) THE TRANSFER OF INTERNAL AUDIT RESOURCES TO THE STATUTORY INSPECTOR GENERAL. THESE REDUCTIONS DO NOT REFLECT A REDUCTION IN THE GOVERNMENT'S WAR ON DRUGS. IN THE CASE OF OCDE, CUSTOMS WILL CONTINUE TO PERFORM THIS EFFORT ON A REIMBURSABLE BASIS.

FY 1990 ENHANCEMENTS

THE $442 MILLION REQUESTED FOR FY 1990 INCLUDES $36 MILLION OF ENHANCEMENTS FOR THREE PROGRAMS IN FY 1990 -- 550 FTE AND $28 MILLION FOR THE CONTAINERIZED CARGO ENFORCEMENT INITIATIVE, $5 MILLION FOR THE TREASURY ENFORCEMENT COMMUNICATIONS SYSTEM II (TECS II), AND $3 MILLION FOR MONEY LAUNDERING. THESE INITIATIVES WILL IMPROVE THE RESULTS OF CUSTOMS DRUG AND OTHER ENFORCEMENT EFFORTS.

THE REQUESTED RESOURCES FOR CARGO ENFORCEMENT WILL ALLOW A SIGNIFICANTLY INCREASED LEVEL OF INTENSIVE EXAMINATIONS OF CARGO CONTAINERS FOR ILLICIT DRUGS. CONTAINERIZED ENFORCEMENT IS A KEY ELEMENT IN THE DRUG ENFORCEMENT STRATEGY. DRUG TRAFFICKERS USE COMMERCIAL CARGO CONTAINERS TO SMUGGLE HUGE VOLUMES OF ILLICIT NARCOTICS, ONE SHIPMENT AT A TIME, INTO THE UNITED STATES. THIS ENHANCEMENT WILL IMPROVE IDENTIFICATION OF TARGET SHIPMENTS AND IMPROVE THE ENFORCEMENT EXAMINATION PROCESS BY PROVIDING ADDITIONAL INSPECTOR AND CANINE ENFORCEMENT OFFICER (CEO) POSITIONS AND EQUIPMENT.

THE REQUEST FOR TECS II WILL PROVIDE FOR IMPROVED INTELLIGENCE AND INVESTIGATIVE SUPPORT TO CUSTOMS, TREASURY AND OTHER FEDERAL LAW ENFORCEMENT AGENCIES DEALING WITH BORDER PROTECTION, NARCOTICS INTERDICTION, AND TERRORISM. THIS ENHANCEMENT WILL ALLOW CUSTOMS TO INSTALL 300 ADDITIONAL TERMINALS, GREATLY INCREASING ACCESS TO THE SYSTEM IN THE FIELD, THUS ENHANCING OUR ENFORCEMENT CAPABILITIES.

THE ADMINISTRATION REQUESTS AN ADDITIONAL $3 MILLION IN FY 1990 TO AUGMENT MONEY LAUNDERING INITIATIVES. CUSTOMS SUCCESS IN DOMESTIC MONEY LAUNDERING INVESTIGATIONS HAS LED TO THE EXPANSION OF THE FINANCIAL ENFORCEMENT PROGRAM TO ENCOMPASS GREATER COOPERATION WITH FOREIGN COUNTERPARTS AND HAS BROADENED OUR FOCUS ON THE INTERNATIONAL FLOW OF ILLEGAL FUNDS. THIS APPROACH HAS ALREADY PRODUCED RESULTS, AS WITNESSED IN THE SUCCESSES OF CUSTOMS UNDERCOVER MONEY LAUNDERING INVESTIGATIONS SUCH AS OPERATION C-CHASE AND OPERATION FLYING KITE.

MAJOR ACCOMPLISHMENTS

IN ITS CAPACITY AS A COLLECTION AGENCY UNDER THE TARIFF ACT OF 1930, THE CUSTOMS SERVICE COLLECTED $17.3 BILLION IN FY 1988. THIS TOTAL IS PROJECTED TO REACH $19.1 BILLION IN FY 1990.

CUSTOMS CLEARED 348,394,000 PERSONS AND PROCESSED 8,878,000 FORMAL MERCHANDISE ENTRIES IN FY 1988, UP 10.7 PERCENT OVER THE PRIOR YEAR.

AMONG OTHER THINGS, CUSTOMS ALSO SEIZED 139,958 POUNDS OF COCAINE, A 59 PERCENT INCREASE OVER THE PRIOR YEAR, 1,353 POUNDS OF HEROIN, A 112 PERCENT INCREASE OVER THE PRIOR YEAR, 918,954 POUNDS OF MARIJUANA, AND 94,675 POUNDS OF HASHISH.

CUSTOMS BICENTENNIAL

THE CUSTOMS SERVICE BEGAN CELEBRATING ITS BICENTENNIAL THIS PAST SUMMER. THE ORIGINAL CUSTOMS DISTRICTS AND PORTS OF ENTRY WERE ESTABLISHED BY THE FIFTH ACT OF CONGRESS ON JULY 31, 1789, IN RESPONSE TO THE URGENT NEED FOR REVENUE COLLECTION UNDER THE TARIFF ACT OF JULY 4, 1789.

EVEN THOUGH CUSTOMS MISSION HAS REMAINED THE SAME OVER THE PAST 200 YEARS, CHANGES IN THE SIZE AND MAKEUP OF THE INTERNATIONAL TRADE COMMUNITY HAVE RESULTED IN A SIGNIFICANT EXPANSION OF THE U.S. CUSTOMS SERVICE AND ITS RESPONSIBILITIES. CUSTOMS DUAL RESPONSIBILITIES OF ENFORCEMENT (INCLUDING DRUG INTERDICTION, CHILD PORNOGRAPHY AND COMMERCIAL FRAUD) AND COMMERCIAL OPERATIONS (INCLUDING REGULATING THE FLOW OF MERCHANDISE ACROSS OUR BORDERS AND THE COLLECTION OF DUTIES AND OTHER CHARGES) HAVE BECOME INCREASINGLY COMPLEX.

AIR PROGRAM

CUSTOMS IS STRENGTHENING ITS FIXED AIR SMUGGLING DETECTION NET IN THE SOUTHEAST BY INSTALLING AN AEROSTAT AT GEORGETOWN, BAHAMAS, TO AUGMENT THE AEROSTAT ALREADY OPERATING AT GRAND BAHAMA ISLAND. IN ACCORDANCE WITH AN AGREEMENT BETWEEN COAST GUARD AND CUSTOMS, CONTROL OF CERTAIN SOUTHEASTERN DETECTION RESOURCES BEGAN TO BE TURNED OVER TO THE U.S. COAST GUARD IN FY 1988 AND WILL CONTINUE IN FY 1989.

ALONG THE SOUTHWEST BORDER, A FIXED AIR SMUGGLING DETECTION NET IS BEING ESTABLISHED THROUGH DEPLOYMENT OF RADAR EQUIPPED AEROSTATS. ONCE INSTALLED, THESE AEROSTATS WILL PROVIDE A LOW LEVEL AIRCRAFT RADAR DETECTION CAPABILITY THAT HAS LONG BEEN NEEDED. THROUGH DEPLOYMENT OF LONG-RANGE SURVEILLANCE AIRCRAFT, MOBILE DETECTION CAPABILITY WILL COMPLEMENT OUR LAND BASED AEROSTATS. THE OPERATION OF COMMAND, CONTROL, COMMUNICATIONS AND INTELLIGENCE (C3I) CENTERS IN MIAMI, FLORIDA AND RIVERSIDE, CALIFORNIA, AND THE NATIONAL AVIATION CENTER IN OKLAHOMA CITY, OKLAHOMA, WILL INTEGRATE THESE DETECTION RESOURCES AND PROVIDE FOR TACTICAL COORDINATION OF AIR INTERDICTIONS. CUSTOMS WILL CONTINUE TO COORDINATE ITS INTELLIGENCE EFFORTS WITH THE DRUG ENFORCEMENT ADMINISTRATION (DEA), SO AS TO RECEIVE THE BENEFIT OF DEA'S UNIQUE RESOURCES.

AIRCRAFT CURRENTLY OPERATED BY CUSTOMS INCLUDE HIGH SPEED JET INTERCEPTORS EQUIPPED WITH RADAR AND INFRARED DETECTION SENSORS, LONG-RANGE TRACKERS, HIGH SPEED HELICOPTERS, SINGLE AND MULTI-ENGINE SUPPORT AIRCRAFT, AND P-3A AND P-3B AIRBORNE DETECTION PLATFORMS. AIRCRAFT ARE OBTAINED THROUGH PURCHASE, LEASE, OR MILITARY LOAN AND MODIFIED TO MEET CUSTOMS SPECIFICATIONS. IN ADDITION, BY THE END OF FY 1989, CUSTOMS EXPECTS DELIVERY OF A SECOND P3-AEW AIRCRAFT, TEN CESSNA CITATIONS, AND SEVEN NOMAD AIRCRAFT. I POINT OUT AT THIS JUNCTURE THAT THE ADMINISTRATION IS PROPOSING THE TRANSFER OF OUR TWO E-2C'S TO THE COAST GUARD AT THE BEGINNING OF FY 1990. THE BASIS OF THIS TRANSFER IS THE COMING ON BOARD OF TWO P-3 AEW AIRCRAFT.

STATE, LOCAL, FEDERAL COOPERATION

CUSTOMS EXPERIENCE HAS SHOWN THAT THE MOST EFFECTIVE USE OF FEDERAL INTERDICTION RESOURCES IS IN JOINT EFFORTS WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES. TOWARD THIS END, CUSTOMS HAS UNDERTAKEN SEVERAL ONGOING JOINT INITIATIVES WITH STATE AND LOCAL ENFORCEMENT AGENCIES. THE BLUE LIGHTNING STRIKE FORCE IN THE SOUTHEASTERN UNITED STATES, INITIATED IN EARLY 1985, AND THE "ALLIANCE" PLAN, EHCOMPASSING OPERATION BLUE FIRE FOR THE SOUTHWEST BORDER, ARE PROVING THAT SUCCESSFUL RESULTS CAN BE OBTAINED FROM A COOPERATIVE ENFORCEMENT EFFORT. THE JFK NARCOTICS SMUGGLING UNIT IN NEW YORK, A JOINT EFFORT BETWEEN CUSTOMS AND THE DRUG ENFORCEMENT ADMINISTRATION, CONTINUES TO MAKE PROGRESS AGAINST CONSPIRACIES TO SMUGGLE NARCOTICS THROUGH THE NEW YORK AND NEW JERSEY PORTS. SIMILAR JOINT EFFORTS ARE BEING CONDUCTED IN SAN DIEGO.

BE ALERT PROGRAM

WE HAVE EMBARKED ON A PROGRAM TO ENLIST CITIZENS IN OUR DRUG INTERDICTION EFFORTS. THE CIVIL AIR PATROL, WHICH IS AN ASSOCIATION OF VOLUNTEER PILOTS, HAS COME FORWARD TO FLY DRUG LOOKOUT MISSIONS FOR US OFF THE COASTS OF MANY SOUTHERN STATES.

CUSTOMS "BE ALERT" HOT LINE OPERATES INTERNATIONALLY. IN ADDITION TO THE UNITED STATES, IT IS AVAILABLE IN BERMUDA, JAMAICA, AND THE BAHAMAS.

MARINE PROGRAM

THE CUSTOMS MARINE PROGRAM COVERS THE SEA APPROACHES TO THE NATION'S BORDERS AS PART OF THE MARINE SMUGGLING PROBLEM. CUSTOMS IS IMPROVING ITS MARINE INTERDICTION STRATEGY THROUGH EXPANDED USE OF ITS AIR DETECTION ASSETS AND IMPROVED INTELLIGENCE. IN ADDITION TO THE INTERDICTION FUNCTION, MARINE ASSETS ARE BEING UTILIZED AS INVESTIGATIVE TOOLS TO ENABLE FURTHER INFILTRATION INTO NARCOTICS SMUGGLING ORGANIZATIONS AND FOR INTELLIGENCE GATHERING. THESE IMPROVEMENTS WILL RESULT IN INCREASING THE RISK AND COSTS TO SMUGGLERS, WHILE REDUCING THE LEVEL OF MARINE SMUGGLING BY PLEASURE CRAFT AND FISHING VESSELS.

THE BLUE LIGHTNING OPERATIONS CENTER (BLOC) IS CURRENTLY THE NERVE CENTER FOR MARINE INTERDICTION EFFORTS IN THE ATLANTIC SOUTHEAST. STATE AND LOCAL LAW ENFORCEMENT GROUPS HAVE ACCESS TO BLOC AND LEND MARINE RESOURCES AND MANPOWER TO OPERATIONS CONTROLLED BY THE CENTER. BLOC COLLECTS AND UTILIZES TACTICAL INFORMATION FROM CUSTOMS VESSELS, AEROSTATS, AND CUSTOMS AIRCRAFT AND THEN DIRECTS THE AVAILABLE MARINE RESOURCES TO THE INTERDICTION SITE IN ORDER TO EFFECT A LAW ENFORCEMENT ACTION. THE RESULT HAS BEEN A SIGNIFICANT INCREASE IN THE IDENTIFICATION, INVESTIGATION AND PROSECUTION OF MAJOR NARCOTICS SMUGGLERS.

CUSTOMS WILL USE NOMAD AIRCRAFT OUTFITTED WITH THE LATEST 360 DEGREE MARINE TARGET DETECTION RADAR AND INFRARED EQUIPMENT TO PROVIDE ENHANCED DETECTION, SORTING, AND TRACKING CAPABILITIES IN REACTING TO A CHANGING THREAT.

IN ORDER TO BETTER MAINTAIN ITS VESSEL FLEET, CUSTOMS HAS AWARDED A NATIONAL MARINE CONTRACT WHICH HAS SIGNIFICANTLY ENHANCED THE READINESS AND PERFORMANCE OF THE CUSTOMS FLEET. ALL OF THE VARIOUS TYPES OF CUSTOMS VESSELS ARE IDENTIFIED IN A VESSEL REPORTING SYSTEM BY LOCATION, MAKE, SIZE, AGE, EQUIPMENT, AND ENGINE TYPE. MAINTENANCE STANDARDS AND PROCEDURES HAVE BEEN DEVELOPED.

INTELLIGENCE

INTELLIGENCE PLAYS A KEY ROLE IN ENFORCEMENT OPERATIONS AND MANAGEMENT DECISIONS IN THE AREAS OF NARCOTICS ENFORCEMENT, CRITICAL TECHNOLOGY, COMMERCIAL FRAUD AND FINANCIAL ANALYSIS. CUSTOMS INTELLIGENCE INTERESTS AND COLLECTION REQUIREMENTS HAVE BEEN COMMUNICATED TO THE INTELLIGENCE COMMUNITY, OTHER FEDERAL AND STATE LAW ENFORCEMENT AGENCIES, AND ALL CUSTOMS ELEMENTS. THESE COLLECTION REQUIREMENTS HAVE INCREASED THE FLOW OF PERTINENT INFORMATION FROM THE INTELLIGENCE COMMUNITY WHICH IS THEN PROCESSED AND DISSEMINATED TO FRONTLINE CUSTOMS AGENTS AND INSPECTORS WORLDWIDE. INCREASED EMPHASIS HAS BEEN PLACED ON THE COLLECTION, ANALYSIS, AND DISSEMINATION OF INTELLIGENCE ASSOCIATED WITH VIOLATIONS OF U.S. SANCTIONS AND EMBARGOES.

CUSTOMS HAS DEVELOPED AN ARTIFICIAL INTELLIGENCE CAPABILITY, WHEREBY SUSPICIOUS CURRENCY MOVEMENT IS TARGETED BY COMPUTER, BASED ON "EXPERT SYSTEM" RULES. THE SYSTEM THUS FAR HAS TARGETED THE FINANCIAL ACTIVITIES OF OVER 400 INDIVIDUALS OR COMPANIES, TOTALLING NEARLY $500 MILLION. THIS CAPABILITY WILL SOON BE EXPANDED TO OTHER AREAS OF CUSTOMS INTEREST.

FINANCIAL LAW ENFORCEMENT PROGRAM

CUSTOMS FINANCIAL ENFORCEMENT PROGRAM FOCUSES ON THE ILLEGAL MONEY FLOW AND PROCEEDS OF MAJOR CRIMINAL ENTERPRISES. THE OBJECTIVE IS TO INTERRUPT THAT FLOW, SEIZE THE ASSETS OF THE ENTERPRISE, AND FOLLOW TO SUCCESSFUL PROSECUTION THOSE INDIVIDUALS WHO DIRECT AND CONTROL THE ORGANIZATION.

DURING FISCAL YEAR 1988, CUSTOMS FINANCIAL ENFORCEMENT PROGRAMS PRODUCED A SIGNIFICANT INCREASE OVER FISCAL YEAR 1987 IN FINANCIAL SEIZURES. IN 1987, CUSTOMS SEIZED $102.4 MILLION IN CURRENCY AND MONETARY INSTRUMENTS, COMPARED TO $164.8 MILLION IN 1988, AN INCREASE OF 61 PERCENT.

THE CURRENCY INVESTIGATIONS AND FINANCIAL INTELLIGENCE BRANCHES OF THE OFFICE OF ENFORCEMENT MAINTAIN AND ACT AS THE NATIONAL CLEARINGHOUSE FOR THE FINANCIAL DATA BASE (FDB). THE FDB CONTAINS INFORMATION GATHERED UNDER THE BANK SECRECY ACT AND HAS RECENTLY BEEN REFINED WITH THE UTILIZATION OF ARTIFICIAL INTELLIGENCE SOFTWARE WHICH HAS IMPROVED CUSTOMS TARGET SELECTION PROCESSES. CUSTOMS WORK WITH DEPARTMENT OF TREASURY STAFF HAS RESULTED IN NEW BANK SECRECY ACT DISSEMINATION GUIDELINES WHICH FACILITATE PROVIDING FDB INFORMATION TO STATE, LOCAL, AND FOREIGN LAW ENFORCEMENT AGENCIES.

EXPORT ENFORCEMENT

CUSTOMS EXODUS PROGRAM CONSISTS OF A MAJOR ENFORCEMENT EFFORT DIRECTED AGAINST VIOLATIONS OF THE ARMS EXPORT CONTROL ACT AND THE EXPORT ADMINISTRATION ACT AS AMENDED IN 1985. THESE VIOLATIONS TYPICALLY INVOLVE THE ILLEGAL EXPORT OF SENSITIVE TECHNOLOGIES, CRITICAL ITEMS OF EQUIPMENT, ARMS, MUNITIONS, WEAPONS SYSTEMS, AND COMPUTER SYSTEMS FROM THE U.S. TO PROHIBITED FOREIGN DESTINATIONS. THE SCOPE OF THE EXODUS EFFORT HAS ALSO BEEN EXPANDED TO INCLUDE ENFORCEMENT OF SANCTIONS AND EMBARGOES AGAINST NICARAGUA, LIBYA, IRAN, CUBA, SOUTH AFRICA, NORTH VIETNAM, CAMBODIA, AND SYRIA.

DURING FY 1988 AND FY 1989, THE EXODUS PROGRAM HAS MOVED INTO INCREASINGLY SOPHISTICATED AREAS INVOLVING MISSILE TECHNOLOGY, NUCLEAR TECHNOLOGY, THE STRATEGIC DEFENSE INITIATIVE, AND ADVANCED WEAPONS SYSTEMS. EXPERIENCE OVER THE PAST EIGHT YEARS HAS SOLIDLY DEMONSTRATED THE EXISTENCE OF A BROAD NETWORK OF INTERNATIONAL FRONT COMPANIES, MULTINATIONAL CONSPIRACIES, AND COMPLEX DIVERSION SCHEMES THAT POSE A MAJOR AND GROWING THREAT TO NATIONAL SECURITY.

FROM THE INCEPTION OF THE PROGRAM IN OCTOBER 1981 THROUGH SEPTEMBER 1988 THERE HAVE BEEN 6,987 SEIZURES OF MERCHANDISE VALUED IN EXCESS OF $511 MILLION, 1,070 ARRESTS, AND 688 CONVICTIONS FOR EXPORT VIOLATIONS.

INTERDICTION, INVESTIGATION, AND INTERNATIONAL COOPERATION ARE THE THREE BASIC ELEMENTS OF THE EXPORT ENFORCEMENT PROGRAM. THESE ELEMENTS PROVIDE A HIGHLY VISIBLE DETERRENT AND HAVE A VALUABLE COMPLIANCE IMPACT ON DOMESTIC INDUSTRIES AND EXPORTERS. WE HAVE ADOPTED A PROACTIVE INVESTIGATIVE APPROACH TO DETECT AND DISRUPT ILLEGAL CRIMINAL CONSPIRACIES BEFORE THEY CAN DAMAGE NATIONAL SECURITY.

IN CONJUNCTION WITH THE DRUG ENFORCEMENT ADMINISTRATION, WE ARE WORKING TO IDENTIFY SHIPMENTS AND EXPORTERS OF PRECURSOR CHEMICALS BEING DIVERTED TO THE PROCESSING OF ILLEGAL DRUGS. ANOTHER RECENT INITIATIVE INVOLVES THE ISSUANCE OF NEW REGULATIONS ON THE EXPORT OF USED CARS IN AN EFFORT TO INTERDICT STOLEN VEHICLES BEING EXPORTED.

A VARIETY OF PROGRAM IMPROVEMENTS ARE PLANNED FOR FY 1990 TO IMPROVE THE OVERALL EFFECTIVENESS OF THE PROGRAM: EXPANDED AND MORE SOPHISTICATED UNDERCOVER OPERATIONS; INCREASED USE OF TRAINING SEMINARS TO INCREASE THE TECHNICAL PROFICIENCY OF THE FIELD AGENT FORCE; INCREASED FOREIGN COOPERATION AND PARTICIPATION IN THE COORDINATING COMMUNITY OF MULTILATERAL EXPORT CONTROLS; AND EXPANDED ASSISTANCE TO FOREIGN GOVERNMENTS IN THE DEVELOPMENT OF THEIR OWN EXPORT ENFORCEMENT PROGRAMS.

CHILD PORNOGRAPHY

CUSTOMS IS CONTINUING ITS EFFORTS TO STOP THE IMPORTATION OF PORNOGRAPHY WHICH EXPLOITS THE USE OF CHILDREN. WE HAVE ESTABLISHED SPECIAL TEAMS THROUGHOUT THE COUNTRY TO INSPECT SUSPECT MAIL AND ARRANGE CONTROLLED DELIVERIES WHENEVER POSSIBLE. CUSTOMS IS EXPANDING ITS INTELLIGENCE DATA BASE OF SUSPECT COUNTRIES, COMPANIES, AND IMPORTERS. THIS SYSTEM IS BEING USED BY FIELD PERSONNEL FOR ANALYTICAL AND INVESTIGATIVE LEADS. ALSO, CUSTOMS HAS ENTERED INTO AGREEMENTS WITH OTHER FEDERAL AGENCIES TO SHARE INTELLIGENCE AND INFORMATION FOR INVESTIGATIVE PURPOSES, AND CUSTOMS INTRODUCED THE CHILD PORNOGRAPHY TIPLINE (1-800-843-5678) OPERATING IN CONJUNCTION WITH THE NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN.

INSPECTION AND CONTROL

CUSTOMS INSPECTORS ARE STATIONED AT OUR AIR, LAND, AND SEAPORTS TO PROCESS PERSONS, CARGO, AND CARRIERS ENTERING THE UNITED STATES AND TO ENFORCE OUR TRADE LAWS.

CUSTOMS INSPECTORS HAVE MAINTAINED ENFORCEMENT EFFECTIVENESS BY INTENSIVE SELECTIVE INSPECTIONS, MADE POSSIBLE BY THE INTRODUCTION OF COMPUTER-ASSISTED ENTRY PROCESSING AND REDUCED PAPERWORK. CUSTOMS OPERATIONAL ANALYSIS STAFF HAS THE RESPONSIBILITY FOR THE DEVELOPMENT AND MAINTENANCE OF LOCAL AND NATIONAL ACS SELECTIVITY ENFORCEMENT CRITERIA. THE RESULTS OF SELECTIVITY HAVE BEEN IMPROVED ENFORCEMENT, MORE EFFICIENT USE OF RESOURCES, AND BETTER FACILITATION FOR PASSENGERS AND CARGO. EXPANDED USE OF AUTOMATED SYSTEMS, SELECTIVITY, AND INNOVATIVE TECHNIQUES HAVE BEEN SUBSTITUTED FOR TRADITIONAL LABOR INTENSIVE PROCESSES, IMPROVING OVERALL EFFICIENCY WHILE HANDLING INCREASED WORKLOADS.

ENFORCEMENT AND SELECTIVITY EFFORTS INCLUDE COOPERATIVE EFFORTS WITH FOREIGN CUSTOMS SERVICES WHICH PROVIDE PRE-ARRIVAL INFORMATION OF PASSENGERS FROM HIGH-RISK COUNTRIES; INCREASED EMPHASIS ON HIGH-RISK PRIVATE AIRCRAFT AND SMALL VESSELS; IMPROVED CANINE ENFORCEMENT; AND THE TESTING OF NEW EXAMINATION/ENFORCEMENT SYSTEMS FOR CARGO CONTROL.

THE STRATEGY OF USING CONTRABAND ENFORCEMENT TEAMS (CET) TO CONDUCT MORE INTENSIVE NARCOTICS EXAMINATIONS OF HIGH RISK PASSENGERS AND CARGO HAS BEEN SUCCESSFUL. IN FY 1988, CET ACCOUNTED FOR 32 PERCENT OF COCAINE SEIZED BY CUSTOMS.

CUSTOMS HAS INSTALLED AUTOMATED PASSPORT READERS AT EVERY MAJOR U.S. AIRPORT TO STREAMLINE TECS II ENFORCEMENT COMPUTER CHECKS AND THUS, THE ENTIRE INSPECTION PROCESS. CUSTOMS IS WORKING WITH AIRLINES AND AIRPORTS TO FURTHER CAPITALIZE ON THE LATEST TECHNOLOGY TO OPTICALLY READ INTERNATIONAL TRAVEL DOCUMENTS, AND CONTINUES TO WORK WITH THE IMMIGRATION AND NATURALIZATION SERVICE (INS) TO CONSOLIDATE INSPECTION FUNCTIONS IN A STREAMLINED AIRPORT PROCESSING SCHEME. ALL OF THESE EFFORTS WILL RESULT IN IMPROVED PASSENGER PROCESSING AND WILL MAXIMIZE THE LAW ENFORCEMENT CAPABILITIES OF BOTH INS AND CUSTOMS.

CANINE ENFORCEMENT PROGRAM

CUSTOMS CANINE ENFORCEMENT PROGRAM IS INTEGRATED IN THE OVERALL CUSTOMS ENFORCEMENT STRATEGY IN TWO AREAS: DRUG DETECTION AND INTERAGENCY/INTERNATIONAL ASSISTANCE. CANINE PROGRAM RESOURCES ARE PRIMARILY AIMED AT INTERDICTING NARCOTICS; HOWEVER, OUR TRAINING CENTER IN FRONT ROYAL, VIRGINIA, ASSISTS THE LAW ENFORCEMENT COMMUNITY AND FOREIGN GOVERNMENTS BY TRAINING CANINE OFFICERS AND DEVELOPING SIMILAR PROGRAMS. THIS COOPERATIVE EFFORT GREATLY ENHANCES STATE AND LOCAL NARCOTICS TASK FORCES AND CONTRIBUTES SIGNIFICANTLY TO THE INTERNATIONAL SEIZURE OF DRUGS DESTINED FOR THE UNITED STATES. WE HAVE RECENTLY DEVELOPED AND INITIATED A CANINE PILOT PROJECT TO USE SPECIALLY TRAINED DOGS SUCH AS COCKER SPANIELS TO DETECT NARCOTICS IN INTERNATIONAL AIRPORT PASSENGER PROCESSING AREAS.

NEW INITIATIVES

RECENTLY CUSTOMS HAS PURSUED TWO NEW INITIATIVES TO IMPROVE ENFORCEMENT EFFORTS - OPERATION WINTERNIGHT AND INNOVATIVE CARRIER PROGRAMS.

OPERATION WINTERNIGHT IS A JOINT CUSTOMS/DEA PROGRAM WHEREBY DEA FIELD OFFICES IN CENTRAL AND SOUTH AMERICA ARE REPORTING NARCOTICS INTELLIGENCE INTO EL PASO INTELLIGENCE CENTER WHICH IS THEN INCORPORATED INTO THE CUSTOMS AUTOMATED COMMERCIAL SYSTEM (ACS) SELECTIVITY MODULE. WINTERNIGHT BEGAN IN MARCH 1988, AND HAS RESULTED IN THE DEVELOPMENT OF OVER 3,400 NARCOTICS CRITERIA BEING PLACED WITHIN THE ACS SELECTIVITY MODULE. THE DEVELOPMENT OF THIS CRITERIA HAS RESULTED IN THE SEIZURE OF 11,288 POUNDS OF COCAINE SINCE ITS INCEPTION.

WITH THE RECENT ADVENT OF THE CUSTOMS AUTOMATED MANIFEST MODULE (AMS), WITHIN THE ACS SYSTEM, CUSTOMS AND DEA FEEL THAT THE WINTERNIGHT PROGRAM CAN BE GREATLY ENHANCED TO TARGET HIGH-RISK NARCOTICS SHIPMENTS IN COMMERCIAL CARGO. IN ADDITION, DEA AND CUSTOMS WILL BE LOOKING TO EXPAND THE WINTERNIGHT PROGRAM INTO SOUTHEAST ASIA.

IN EFFORTS TO ESTABLISH A DRUG FREE WORKPLACE FOR COMMERCIAL CARRIERS AND PREVENT NARCOTICS FROM BEING PLACED ON BOARD THEIR CONVEYANCES OR INTRODUCED INTO COMMERCIAL CARGO, CUSTOMS IS IN THE PROCESS OF INCREASING THE STANDARDS IN SUPER CARRIER INITIATIVE AGREEMENTS. THE AGREEMENTS WILL BE TAILORED TO EACH CARRIER AND LOCATION DEPENDING ON RISK LEVELS AND MUST BE CERTIFIED BY THE INDIVIDUAL CARRIER AS BEING FULLY IMPLEMENTED.

CUSTOMS WILL PERFORM SELECTIVE FOREIGN SURVEYS; IF THE CARRIER COMPLIES WITH ITS AGREEMENT, POTENTIAL PENALTY LIABILITY IN CASES OF NARCOTICS SMUGGLING WILL BE REDUCED.

UNDER THE CONGRESSIONALLY-MANDATED 2-YEAR TEST AT THREE AIRPORTS (LOS ANGELES, MIAMI, AND DALLAS - FT. WORTH), ENTITLED THE AIR CARRIER SMUGGLING PREVENTION PROGRAM, CUSTOMS WILL EMPHASIZE REQUIREMENTS THAT CARRIERS MUST IMPLEMENT AT FOREIGN POINTS OF ORIGIN TO PREVENT NARCOTICS SMUGGLING. CUSTOMS PERSONNEL WILL CONTINUE TO INSPECT HIGH-RISK ARRIVALS; CARRIER PERSONNEL WILL BE ALLOWED TO SEARCH THOSE FLIGHTS CUSTOMS CHOOSES NOT TO INSPECT AND WILL CONDUCT QUANTITY VERIFICATIONS OF CARGO.

AIRPORT SECURITY PROGRAM

IN 1986, IN RESPONSE TO OUR CONCERN ABOUT THE THREAT OF A TERRORIST INCIDENT OCCURRING AT A UNITED STATES AIRPORT, WE ESTABLISHED THE CUSTOMS AIRPORT SECURITY PROGRAM. THE PURPOSE OF THIS PROGRAM IS TO IDENTIFY THOSE INDIVIDUALS WHO REQUIRE UNESCORTED ACCESS TO CUSTOMS PROCESSING AREAS AND TO LIMIT THAT ACCESS TO THOSE INDIVIDUALS WHO DO NOT APPEAR TO POSE A THREAT TO THE AREA. SINCE THEN, WE HAVE CONDUCTED CRIMINAL HISTORY CHECKS ON OVER 175,000 EMPLOYEES WHOSE DUTIES REQUIRE THEM TO HAVE ACCESS TO THE CUSTOMS PROCESSING AREAS AT AIRPORTS. WE HAVE IDENTIFIED AND DENIED ACCESS TO 1,683 INDIVIDUALS WHO POSE A THREAT TO THE AREA AND ARRESTED 172 PEOPLE BASED ON INFORMATION UNCOVERED, THUS INCREASING SECURITY. IN ADDITION, WE PROVIDE ONGOING TRAINING TO OUR PERSONNEL ON LOCAL CONTINGENCY PLANS AND THE IDENTIFICATION AND INTERDICTION OF TERRORISTS ATTEMPTING TO ENTER THE UNITED STATES. WE WILL CONTINUE TO ENSURE THAT CUSTOMS AREAS AT AIRPORTS ARE "SECURE" AREAS.

MAIL ENTRY PROCESSING

A TEST TO AUTOMATE CUSTOMS MAIL ENTRY PROCESSING HAS BEEN CONDUCTED AND FOUND TO BE VERY SUCCESSFUL. THIS SYSTEM, IF IMPLEMENTED AT THE FIVE MAJOR MAIL BRANCHES, COULD INCREASE REVENUE COLLECTIONS BY $5 MILLION DURING THE FIRST YEAR OF OPERATION. A JOINT OPERATION WITH THE POSTAL SERVICE HAS ESTABLISHED A NEW ENFORCEMENT POLICY FOR PARCEL MAIL. THIS WILL TARGET HIGH RISK AND SOURCE COUNTRY PARCELS ENCOUNTERED BY POSTAL OFFICIALS, WHO WILL PRESENT THEM TO CUSTOMS. FUTURE PLANS INCLUDE A JOINT ANTI-DRUG CAMPAIGN AND AN OUTBOUND CURRENCY PROJECT IN THE MAIL SYSTEM.

U.S. - MEXICO COOPERATIVE EFFORTS

MEETINGS AND DISCUSSIONS HAVE TAKEN PLACE WITH THE BORDER TRADE ALLIANCE (BTA), AN ALLIANCE OF U.S. - MEXICAN BORDER ORGANIZATIONS. WORKING WITH THE BTA, U.S. CUSTOMS OPENED COMMUNICATIONS WITH MEXICO CUSTOMS ON COMMERCIAL ISSUES TO WORK TOWARD COOPERATIVE EFFORTS TO SOLVE SOME OF THE PHYSICAL BOTTLENECKS THAT IMPEDE COMMERCIAL CARGO MOVEMENT BETWEEN OUR TWO NATIONS. VERY TANGIBLE RESULTS HAVE BEEN ATTAINED: COORDINATION OF HOURS OF SERVICE FOR COMMERCIAL CARGO PROCESSING AND EXPANSION OF U.S. CUSTOMS WORK SHIFTS TO EFFECT AN INCREASE IN REGULAR HOURS OF SERVICE; A COMMITMENT FROM MEXICO CUSTOMS TO LIMIT THE RELEASE OF SHIPMENTS NOT READY FOR U.S. CUSTOMS PROCESSING; USE OF THE U.S. IMPORT LOTS AS PARKING LOTS; AND MEXICAN CUSTOMS DEVELOPMENT OF A PILOT PROJECT - AN AUTOMATED SYSTEM THAT WOULD ELIMINATE THEIR BATCH PROCESSING/RELEASE SYSTEM OF EXPORTS. THE LATTER PROJECT IS EXPECTED TO RESULT IN A MORE EVEN FLOW OF TRUCK TRAFFIC FROM MEXICO.

MOST RECENTLY, AN INNOVATIVE PROGRAM HAS BEEN DEVELOPED FOR TESTING AT SOUTHERN BORDER PORTS. THIS PROGRAM WILL SPEED THE ENTRY OF ASSEMBLY PLANT GOODS FROM MEXICO TO THE UNITED STATES. THE CUSTOMS SERVICES OF BOTH COUNTRIES HAVE AGREED TO TEST A TRIPARTITE AGREEMENT BETWEEN U.S. CUSTOMS, MEXICO CUSTOMS, AND U.S./MEXICO ASSEMBLY PLANTS (MAQUILADORAS), DESIGNED TO

FACILITATE THE ENTRY OF MAQUILADORA PRODUCTS WHILE MAINTAINING THE LEVEL OF VIGILANCE NECESSARY TO PREVENT THE SMUGGLING OF CONTRABAND THROUGH THE USE OF ASSEMBLY PLANT RESOURCES. PLANTS THAT PASS SECURITY REQUIREMENTS AND MAINTAIN STANDARDS SET FORTH IN THE AGREEMENT WILL ENJOY THE BENEFITS OF RAPID CUSTOMS ENTRY AND INSPECTION PROCESSING.

LINE RELEASE

FIRST TESTED IN THE BUFFALO DISTRICT IN LATE 1986 FOR USE ALONG THE NORTHERN BORDER, LINE RELEASE HAS BEEN EXPANDED TO 36 PORTS WITH 40 SITES ALONG THE U.S.-CANADA AND U.S.-MEXICO BORDER. LINE RELEASE WAS DEVELOPED TO MEET THE INCREASING DEMANDS FOR EFFICIENT, TIMELY CUSTOMS PROCESSING OF TRUCK CARGO AND IS DESIGNED TO WORK IN CONJUNCTION WITH THE ACS SELECTIVITY SYSTEM. LINE RELEASE UTILIZES BAR CODE TECHNOLOGY FOR MONITORING AND TRACKING PRE-APPROVED, REPETITIVE, LOW-RISK SHIPMENTS. IT HAS ALLOWED CUSTOMS TO CONCENTRATE EFFORTS ON HIGH-RISK SHIPMENTS AND HAS RESULTED IN A NET INCREASE IN PRODUCTIVE ENFORCEMENT EXAMS AND ACTIONS. TRUCK TRAFFIC CONGESTION AT CRITICAL HIGH VOLUME LOCATIONS SUCH AS THE PEACE BRIDGE IN BUFFALO AND THE AMBASSADOR BRIDGE IN DETROIT HAS BEEN REDUCED. CUSTOMS HAS PLANS TO INSTALL LINE RELEASE NETWORKING AT ELEVEN SITES THIS FISCAL YEAR.

NORTHERN BORDER INITIATIVE

THE ESTABLISHMENT OF COMMERCIAL CENTERS AND PERMIT PORTS ALLOWS CUSTOMS TO MORE EFFICIENTLY USE MANPOWER AND AUTOMATED SYSTEMS CARGO EXAMINATION EQUIPMENT AND FACILITIES AT SPECIFIC LOCATIONS RATHER THAN AT ALL CROSSINGS ALONG THE NORTHERN BORDER. THIS CONCEPT IS CONSISTENT WITH OUR FACILITATION EFFORTS WHILE GIVING US ENFORCEMENT CAPABILITIES THAT DO NOT EXIST AT OUR SMALLER PORTS OF ENTRY.

CUSTOMS TESTED A COMMERCIAL CENTER/PERMIT PORT SYSTEM AND FOUND THAT IT WORKED SUCCESSFULLY. THE SYSTEM WAS EXPANDED TO THE OTHER NORTHERN BORDER STATES WITH 27 PORTS OF ENTRY DESIGNATED AS COMMERCIAL CENTERS. THE REMAINING PORTS ARE PERMIT PORTS. THE BASIC PREMISES ARE: (1) AS MUCH CARGO IS FUNNELED TO THE COMMERCIAL CENTERS AS POSSIBLE; (2) PERMITS TO ENTER LOW-RISK CARGO AT OTHER THAN COMMERCIAL CENTERS ARE ISSUED IF IT CAUSES A HARDSHIP TO ENTER THE MERCHANDISE ELSEWHERE; (3) CURRENT STAFFING LEVELS, HOURS OF SERVICE, PASSENGER PROCESSING, INFORMAL ENTRIES AND NONCOMMERCIAL SHIPMENTS ARE NOT AFFECTED. EACH COMMERCIAL CENTER HAS LINE RELEASE CAPABILITIES AND WE ARE IN THE PROCESS OF INCORPORATING RAIL SHIPMENTS INTO THE BORDER CARGO RELEASE PROGRAM.

CENTRALIZED EXAMINATION STATION UPDATE

GAO HAS CONDUCTED A REVIEW OF THE CENTRALIZED EXAMINATION STATION (CES) PROGRAM. THEIR REPORT WAS A FAVORABLE ONE, IN WHICH THEY FOUND NO REASON TO FURTHER IMPEDE IMPLEMENTATION OF CUSTOMS CES PROGRAM. IN LIGHT OF THIS REPORT, CUSTOMS HAS OPENED A VARIETY OF CESS AROUND THE COUNTRY. THE CONCEPT OF CES HAS ALLOWED CUSTOMS TO SELECTIVELY TARGET SHIPMENTS ARRIVING IN CONTAINERS FOR INTENSIVE EXAMINATION. THOSE SHIPMENTS WHICH HAVE BEEN IDENTIFIED AS LOW RISK, ARE BEING RELEASED MORE QUICKLY RESULTING IN LOWER EXAMINATION COSTS.

COMMERCIAL ACTIVITIES

CUSTOMS COMMERCIAL ACTIVITIES INCLUDE THE OVERALL MISSION OF APPRAISEMENT, CLASSIFICATION AND COLLECTION OF DUTIES FROM IMPORTED MERCHANDISE; EFFECTIVE ENFORCEMENT OF CUSTOMS LAWS, REGULATIONS, AND OTHER AGENCY REQUIREMENTS FOR THE CONTROL OF CARRIERS AND CARGO; AND ENSURING THAT IMPORTED MERCHANDISE MEETS ALL NECESSARY REQUIREMENTS FOR ENTRY INTO THE UNITED STATES. IN ORDER TO CARRY OUT THIS COMPLEX TASK, CUSTOMS HAS DEVELOPED POLICIES AND PROCEDURES TO: INSURE UNIFORMITY AND ACCURACY IN

THE CLASSIFICATION AND VALUATION OF MERCHANDISE; ENFORCE LAWS AND REGULATIONS THAT NEUTRALIZE HARMFUL TRADE PRACTICES; AND TO ENFORCE INTERNATIONAL CODES AND AGREEMENTS THAT PROVIDE FOR UNIFORMITY OF TRADE PROCEDURES.

OUR MAJOR CHALLENGE CONTINUES TO BE FACILITATION OF CARGO AND ENTRY PROCESSING WHILE AT THE SAME TIME MAINTAINING HIGH COMPLIANCE LEVELS IN DEALING WITH AN INCREASINGLY COMPLEX WORKLOAD. WE ARE CONTINUING TO MEET THIS CHALLENGE THROUGH THE INCREASED USE OF SELECTIVITY PROCESSING SUPPORTED BY ACS AND ITS VARIOUS MODULES. SYSTEMS FOR LINKING FIELD OPERATIONS WITH THE CUSTOMS NATIONAL COMPUTER, AS WELL AS AUTOMATED INTERFACES WITH BROKERS, CARRIERS, AND OTHER AGENCIES HAVE BEEN IMPLEMENTED. THESE SYSTEMS, TOGETHER WITH OTHER INNOVATIVE PROCEDURES, SUCH AS OUR NEW PRE-ENTRY CLASSIFICATION AND BINDING RULINGS PROGRAMS AND EFFORTS TO IMPROVE AND ENHANCE BROKER COMPLIANCE, ARE WORKING TO BRING ABOUT IMPROVED QUALITY AND UNIFORMITY IN IMPORTED MERCHANDISE PROCESSING. ADDITIONALLY, INITIATIVES HAVE BEEN UNDERTAKEN TO GREATLY INCREASE THE USE OF COMPUTER ASSISTED AUDIT TECHNIQUES AND AUDIT TARGETING WITHIN THE REGULATORY AUDIT FUNCTION.

AN IMPORTANT FUNCTION IN CUSTOMS TRADE ENFORCEMENT PROGRAM IS THE DETECTION AND PREVENTION OF COMMERCIAL FRAUD. OUR EFFORTS IN THIS AREA HAVE BEEN SIGNIFICANTLY ENHANCED BY THE IMPLEMENTATION OF A CENTRALIZED APPROACH FOR COORDINATING AND DISSEMINATING INFORMATION AND INTELLIGENCE TO FIELD UNITS, AS WELL AS AN INCREASED USE OF MULTI-DISCIPLINARY EFFORTS AND EXPERTISE IN DETECTING POTENTIAL FRAUDULENT TRANSACTIONS.

BY AUTOMATING CUR ENTRY PROCESSING SYSTEMS, THE INCREASING VOLUME OF ENTRY PAPERWORK IS NOW BEING PROCESSED MORE COST-EFFECTIVELY AND EFFICIENTLY. ALONG WITH THESE INNOVATIONS, WE ARE LOOKING TO ELIMINATE AS MANY PAPER FORMS AND REQUIREMENTS FROM THE ENTRY PROCESS AS POSSIBLE. OUR EFFORTS IN THIS AREA HAVE LED TO A LEADERSHIP ROLE IN THE INTERNATIONAL COMMUNITY IN THE DEVELOPMENT AND TESTING OF ELECTRONIC DATA INTERCHANGE, WHICH ONE DAY WILL RESULT IN THE TOTAL TRANSMISSION OF INVOICE AND OTHER ENTRY-RELATED DATA BY ELECTRONIC COMMUNICATION BETWEEN TRADING NATIONS AND THE INTERNATIONAL BUSINESS COMMUNITY.

INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT

CUSTOMS IS CURRENTLY PLANNING TO IMPLEMENT AN INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT PROGRAM TO PRESENT THE ILLEGAL, BUT GROWING, SALE OF OUR INTELLECTUAL PROPERTIES, PARTICULARLY THOSE NEW DYNAMIC TECHNOLOGIES THAT WILL DETERMINE THE INDUSTRIAL WORLD LEADERSHIP OF THE FUTURE. THE PROGRAM WILL FOCUS AT THIS TIME ON SUCH NEW TECHNOLOGIES AS SUPER COMPUTERS, SUPER CONDUCTORS, HIGH DEFINITION TELEVISION, AND BIO-TECHNOLOGY. TO THIS END, CUSTOMS IS REFOCUSING ITS ENFORCEMENT EFFORTS TO ISSUES THAT DIRECTLY IMPACT ON OUR GLOBAL COMPETITIVENESS. THE PROGRAM WILL AGGRESSIVELY ENFORCE INTELLECTUAL PROPERTY RIGHTS VIOLATION BY IMPLEMENTING SPECIALIZED ORGANIZATIONS AND STAFF TO KNOWLEDGEABLY ATTACK THIS VERY SIGNIFICANT PROBLEM.

FY 1989/1990 ACTIVITIES AND STRATEGIES

THE NEXT TWO YEARS WILL SEE DRAMATIC CHANGES IN CUSTOMS COMMERCIAL ACTIVITIES. THE HARMONIZED TARIFF SYSTEM AND THE CANADIAN FREE TRADE AGREEMENT HAVE NOW BEEN IMPLEMENTED, ALONG WITH A NUMBER OF INNOVATIVE CUSTOMS PROGRAMS, SUCH AS OUR NEW BINDING RULINGS PROGRAM. WHILE WE HAVE DONE MUCH TO PREPARE FOR THESE CHANGES, WE CAN EXPECT THE EARLY MONTHS OF 1989 TO BE A LEARNING PROCESS FOR TRADE AND GOVERNMENT ALIKE.

OUR MAJOR GOALS IN THE UPCOMING YEARS WILL BE TO: CONTINUE THE DEVELOPMENT AND REFINEMENT OF ACS; CONTINUE OUR COMMITMENT TO THE DETECTION, DETERRENCE AND PROSECUTION OF COMMERCIAL FRAUD;

IMPROVE PRODUCTIVITY AND RESOURCE CONTROL, THEREBY FURTHERING OUR PAPERLESS ENTRY GOALS; INCREASE THE UNIFORMITY OF COMMERCIAL ENTRY PROCESSING; FACILITATE THE MOVEMENT OF CARGO; OVERSEE A SMOOTH TRANSITION INTO THE IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE; AND FOCUS OUR AUDIT CAPABILITIES TOWARD GREATER SUPPORT OF FRAUD DETECTION AND VIOLATION OF TRADE AGREEMENTS BY ENHANCING OUR USE OF COMPUTER ASSISTED AUDIT TECHNIQUES. WE WILL ALSO CONTINUE TO MAKE EVERY EFFORT POSSIBLE TO ADDRESS THE NEEDS OF THE INCREASING NUMBER OF TRADE CONTROL PROGRAMS DESIGNED TO PROTECT DOMESTIC INDUSTRY.

REGULATORY AUDIT

MANY NEW AND INNOVATIVE TECHNIQUES HAVE BEEN IMPLEMENTED IN OUR REGULATORY AUDIT PROGRAM WHICH ARE AIMED AT PRODUCING MAXIMUM RESULTS FOR THE CUSTOMS SERVICE. TO ENHANCE OUR AUDIT CAPABILITIES, WE HAVE UNDERTAKEN THE AUTOMATION OF THE ENTIRE AUDIT PROCESS WHICH WILL EXPAND OUR CAPABILITY FOR IDENTIFYING AND TARGETING AUDIT CANDIDATES. OUR GOAL IS TO CONTINUE TO INCREASE THE AVERAGE YIELD PER AUDIT MAN-YEAR.

PRE-ENTRY CLASSIFICATION AND BINDING RULINGS

IN RESPONSE TO CONTINUED COMPLAINTS FROM THE TRADE OVER INCONSISTENT CLASSIFICATION AND LENGTHY DELAYS IN PROVIDING RULINGS TO IMPORTERS, AS WELL AS AN ONGOING CONCERN THAT OUR SYSTEM OF PROVIDING CLASSIFICATION ADVICE TO IMPORTERS LACKED UNIFORMITY, RELIABILITY, AND TIMELINESS, WE DEVELOPED AND IMPLEMENTED A CLASSIFICATION RULINGS PROGRAM ON JANUARY 1, 1989. THE SYSTEM EXPANDS THE OVERSIGHT ROLE OF OUR NATIONAL IMPORT SPECIALISTS FOR CLASSIFICATION QUALITY, AND UTILIZES DEPUTY NATIONAL IMPORT SPECIALISTS FOR LESS COMPLICATED RULINGS.

FOR MOST REQUESTS, WE WILL ISSUE A BINDING RULING IN 30 DAYS OF THE REQUEST. MORE DIFFICULT AND FAR-REACHING ISSUES WILL CONTINUE TO BE DECIDED BY ATTORNEYS IN OUR HEADQUARTERS OFFICE OF REGULATIONS AND RULINGS. WE BELIEVE THE 30-DAY PERIOD IS SUFFICIENT TO RESPOND TO MOST CLASSIFICATION QUESTIONS. WITH THE IMPLEMENTATION OF THIS PROGRAM, ALL WRITTEN CLASSIFICATION ADVICE FROM CUSTOMS WILL BE BINDING. THE PROGRAM, REFERRED TO AS THE DISTRICT RULINGS PROGRAM, ENHANCES THE PRE-ENTRY CLASSIFICATION PROGRAM WHICH WAS ALSO IMPLEMENTED IN JANUARY 1989. PRE-ENTRY CLASSIFICATION WILL BE USED FOR LARGE VOLUMES OF COMMODITIES (KNOWN AS LINE REVIEWS). IT DIFFERS FROM THE DISTRICT RULINGS PROGRAM IN THAT, IN MOST CASES, WE WILL CONTACT PROSPECTIVE PARTICIPANTS, AND DECISIONS WILL BE REVIEWED PRIOR TO OFFICIAL NOTICE TO THE IMPORTER. THE REVIEW PROCESS WILL USUALLY OCCUR WITHIN 45 DAYS OF RECEIPT. LINE REVIEW CLASSIFICATION DECISIONS GIVEN IN WRITING ARE ALSO BINDING.

BOTH PROGRAMS HAVE BEEN DEVELOPED TO PROVIDE THE TIMELINESS AND UNIFORMITY WHICH IMPORTERS NEED, AS WELL AS PROVIDE A CONTROL POINT FOR CUSTOMS IN FACILITATING BOTH QUALITY AND UNIFORMITY IN OUR CLASSIFICATION DECISIONS.

BROKER COMPLIANCE

BROKERS FILE APPROXIMATELY 90 PERCENT OF ALL CUSTOMS ENTRIES AND WILL CONTINUE TO REPRESENT THE MAJORITY OF IMPORTERS FOR THE FORESEEABLE FUTURE. BY THE END OF FY 1989 IT IS EXPECTED THAT 90 PERCENT OF ALL ENTRIES FILED BY BROKERS WILL BE FILED ELECTRONICALLY VIA THE AUTOMATED BROKER INTERFACE (ABI), WITH THE MAJORITY OF THOSE ENTRIES PAPERLESS. IN ORDER FOR CUSTOMS TO OPERATE WITH CONFIDENCE IN AN ELECTRONIC ENVIRONMENT, WE MUST BE ABLE TO RELY ON THE QUALITY OF THE BROKER. FOR THAT REASON, DURING FY 1988, WE ESTABLISHED, FOR THE FIRST TIME, A NATIONAL PROGRAM TO EVALUATE BROKER PERFORMANCE.

THE BROKER COMPLIANCE AND EVALUATION PROGRAM MONITORS BROKER PERFORMANCE AND ASSURES A HIGH LEVEL OF COMPLIANCE WITH ALL LAWS AND REGULATIONS ENFORCED BY CUSTOMS. ALSO, DURING FY 1988, WE SUCCESSFULLY IMPLEMENTED AND ENFORCED A MAJOR PIECE OF LEGISLATION WHICH INCREASED THE LEVEL OF SUPERVISION AND CONTROL THAT A BROKER EXERCISES OVER HIS CUSTOMS BUSINESS BY REQUIRING THAT EVERY BROKER EMPLOY A LICENSED INDIVIDUAL IN EVERY DISTRICT IN WHICH HE OPERATES.

COMMERCIAL FRAUD

THE CURRENT BUSINESS CLIMATE IS CONTINUING TO PRESENT CUSTOMS WITH AN INCREASED COMMERCIAL FRAUD THREAT. PROHIBITED MERCHANDISE CONTINUES TO ENTER U.S. COMMERCE THROUGH PRESENTATION OF FALSE DOCUMENTATION UPON ENTRY, USE OF COUNTERFEIT VISAS AND EXPORT LICENSES, USE OF THIRD COUNTRIES AS TRANSSHIPMENT POINTS, UNINTENTIONAL MISDESCRIPTIONS, AND MISCLASSIFICATIONS. IN ADDITION, REVENUE LOSSES ARE SUSTAINED DUE TO UNDERVALUATION AND THE SHIPMENT OF EXCESS MERCHANDISE NOT DECLARED UPON ENTRY.

THE SHIFT OF RESOURCES TO SIGNIFICANT FRAUD INVESTIGATIONS HAS PRODUCED EXCELLENT RESULTS IN RECENT YEARS. DOMESTIC INDUSTRIES HAVE BEEN PROTECTED FROM UNFAIR AND ILLEGAL INTERNATIONAL TRADE PRACTICES, AND THE GOVERNMENT HAS RECEIVED SUBSTANTIAL MONETARY RETURNS FROM CRIMINAL FINES AND CIVIL PENALTIES. WE WILL CONTINUE TO USE MULTI-DISCIPLINED FRAUD TEAMS, EMPLOYING THE EXPERTISE OF SPECIAL AGENTS, IMPORT SPECIALISTS, INSPECTORS, REGULATORY AUDITORS, LEGAL COUNSEL, AND TECHNICAL STAFF. HIGH-RISK COMMODITIES SUCH AS TEXTILES, WEARING APPAREL, STEEL, COFFEE, AND ELECTRONICS WILL CONTINUE TO BE TARGETED, AS WILL THE DETECTION OF COPYRIGHT AND TRADEMARK VIOLATIONS. INCREASED PROSECUTION AND PENALTIES FROM THESE INVESTIGATIONS WILL PLAY A MAJOR ROLE IN ENSURING THAT LAWFUL REVENUES ARE COLLECTED AND THAT THE INTEGRITY OF TRADE AGREEMENTS IS MAINTAINED.

RECENT CONCERNS EXPRESSED BY CONGRESS, DOMESTIC INDUSTRIES, AND THE ADMINISTRATION REQUIRE THAT CUSTOMS PLACE A HIGH PRIORITY ON THE ENFORCEMENT OF COUNTRY-OF-ORIGIN MARKING REQUIREMENTS. IN THIS REGARD, WE ARE CONDUCTING A MAJOR MARKING INITIATIVE WHICH IS DESIGNED TO TARGET A WIDE RANGE OF COMMODITIES PARTICULARLY SUSCEPTIBLE TO VIOLATION. TO DATE, THE RESULTS OF OUR MARKING ENFORCEMENT EFFORTS HAVE CONFIRMED SUSPICIONS OF SIGNIFICANT VIOLATIONS.

FISCAL YEARS 1989 AND 1990 WILL SEE CUSTOMS PAYING INCREASED ATTENTION TO COMMODITIES SUCH AS TEXTILES AND STEEL, AND ALSO WORKING HARD TO THWART ATTEMPTS TO CIRCUMVENT A VARIETY OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS, AS WELL AS SUSPENSION AGREEMENTS AND ATTEMPTS TO CIRCUMVENT VOLUNTARY RESTRAINT AGREEMENTS.

CUSTOMS FIELD LABORATORIES

AS PART OF OUR OVERALL ENFORCEMENT EFFORT, WE HAVE SIGNIFICANTLY EXPANDED THE ROLE OF OUR FIELD LABORATORIES IN SUPPORTING INVESTIGATIONS OF COMMERCIAL FRAUD THROUGH ENHANCED DOCKSIDE EXAMINATIONS AND IMPROVED TECHNOLOGY. DURING FY 1989 AND FY 1990, THE LABORATORIES WILL CONTINUE TO PARTICIPATE IN MULTI-DISCIPLINE FRAUD TEAMS, PROVIDING TECHNICAL INFORMATION ON HIGH-RISK COMMODITIES. SPECIAL ANALYTICAL INSTRUMENTATION PROVIDES THE LABORATORIES WITH THE CAPABILITIES TO SUPPLY SOPHISTICATED TECHNICAL INFORMATION IN SUPPORT OF COMMERCIAL FRAUD INVESTIGATIONS. THE LABORATORIES WILL BE OPERATING AN "18-WHEELER" MOBILE LABORATORY ALONG THE SOUTHWEST BORDER TOGETHER WITH THREE ADDITIONAL MOBILE VANS USED TO SUPPORT OUR FIELD ENFORCEMENT EFFORTS.

FINES, PENALTIES, AND FORFEITURES

OUR MAJOR OBJECTIVES FOR THE FINES, PENALTIES, AND FORFEITURES (FP&F) PROGRAM WILL BE TO: FURTHER ENHANCE THE NATIONAL FP&F AUTOMATED SYSTEM; STANDARDIZE FP&F FIELD PRACTICES AND PROCEDURES; AND ESTABLISH PROCEDURES THAT WILL RESULT IN THE PROMPT COLLECTION OF FINES, PENALTIES, AND LIQUIDATED DAMAGES. AUTOMATING OUR FP&F WORKLOAD WILL ENABLE US TO PROVIDE CONSISTENT, LEGALLY SUFFICIENT NOTICES TO VIOLATORS, AS WELL AS HELP TO ENSURE PROMPT ACTION ON CASES BY FACILITATING INQUIRIES ON CASE STATUS. WE PLAN TO CONTINUE OUR EFFORTS TO COLLECT OUTSTANDING FP&F DEBTS AND REDUCE CASE BACKLOGS.

U.S./CANADA FREE TRADE AGREEMENT

THE U.S. CANADA FREE TRADE AGREEMENT (FTA), WHICH WAS IMPLEMENTED JANUARY 2, 1989, CREATES THE WORLD'S LARGEST FREE TRADE AREA. IT IS THE MOST HISTORIC, FAR-REACHING TRADE AGREEMENT EVER CONCLUDED, BREAKING NEW GROUND IN REMOVING BARRIERS TO TRADE IN AREAS OF TARIFFS, INVESTMENTS, SERVICES, AGRICULTURE, AND BUSINESS TRAVEL. BY 1998, TARIFFS WILL HAVE BEEN PROGRESSIVELY ELIMINATED IN STAGED REDUCTIONS ON GOODS WHICH "ORIGINATE" IN THE U.S. AND/OR CANADA. IN ORDER FOR GOODS TO QUALIFY UNDER THIS AGREEMENT, THEY WILL HAVE TO MEET CRITERIA SPELLED OUT IN A SET OF "RULES OF ORIGIN." THESE RULES SERVE TO PRECLUDE THIRD COUNTRIES FROM OBTAINING THE BENEFITS OF THE AGREEMENT SIMPLY BY PASSING THEIR GOODS THROUGH THE U.S. OR CANADA.

IN NOVEMBER AND DECEMBER OF 1988, PRIOR TO FTA IMPLEMENTATION, CUSTOMS CONDUCTED TRAINING FOR FIELD PERSONNEL AND THE TRADE COMMUNITY IN PREPARATION FOR ADMINISTERING THE FTA. CUSTOMS TRAINERS CONDUCTED IMPORT SPECIALIST AND TRADE SEMINARS IN CANADIAN LOCATIONS. TEN CUSTOMS REPRESENTATIVES HAVE PARTICIPATED IN 122 SEMINARS HOSTED BY THE CANADIAN EXPORTERS ASSOCIATION AND CANADA EXTERNAL AFFAIRS DURING JANUARY 1989. APPROXIMATELY 25,000 CANADIAN MANUFACTURERS HAVE BEEN INVITED TO THESE SEMINARS.

AUTOMATED COMMERCIAL SYSTEM

ACS IS CUSTOMS SINGLE, COMPREHENSIVE AUTOMATED SYSTEM FOR HANDLING OUR COMMERCIAL PROCESSING. THE SYSTEM IS NOW PROCESSING MERCHANDISE ENTRIES, REVENUE COLLECTIONS, ENTRY LIQUIDATIONS, AND AN INCREASING NUMBER OF BROKER TRANSACTIONS. IN 1988, THE NUMBER OF CUSTOMS AND TRADE COMMUNITY SYSTEMS USERS GREW SUBSTANTIALLY. THERE ARE NOW NEARLY 3,000 ON-LINE CUSTOMS TERMINALS IN PLACE AND 800 TRADE COMMUNITY REMOTE BATCH TERMINALS COMMUNICATING WITH THE CUSTOMS DATA CENTER. SIGNIFICANT NEW CAPABILITIES HAVE BEEN IMPLEMENTED, BRINGING ACS EVER CLOSER TO THE NEEDS OF ITS USERS AND TO OUR GOAL OF COMPLETELY AUTOMATING OUR COMMERCIAL PROCESSING ACTIVITIES. THESE INCLUDE: THE CAPABILITY FOR ENTRY FILERS TO PAY ESTIMATED DUTIES AND TAXES VIA ELECTRONIC FUNDS TRANSFER, AN AUTOMATED HARMONIZED SYSTEM TARIFF FILE, AND OPERATIONAL PROGRAMS FOR ELECTRONIC (PAPERLESS) ENTRY AND ENTRY SUMMARY PROCESSING. A NUMBER OF THE INITIATIVES WHICH WE WILL BE PURSUING IN FY 1989 AND FY 1990 ARE EITHER LINKED TO OR ARE DEPENDENT UPON OUR CONTINUED PROGRESS IN DEVELOPING AND IMPLEMENTING ACS.

AUTOMATING THE CUSTOMS INFORMATION EXCHANGE

OUR EFFORTS TO EFFECTIVELY ACHIEVE CLASSIFICATION UNIFORMITY DEPEND ON A MORE EFFICIENT SYSTEM FOR REPORTING, RESOLVING, AND DISSEMINATING CLASSIFICATION ISSUES AND DECISIONS. OUR EXISTING SYSTEM FOR DISSEMINATING THIS INFORMATION, THE CUSTOMS INFORMATION EXCHANGE (CIE), RELIES ON THE MANUAL PREPARATION AND MAILING OF FORMS (THE CF 6431, REPORT OF CLASSIFICATION AND VALUE) BETWEEN OUR NATIONAL AND FIELD IMPORT SPECIALISTS.

AUTOMATING THE CIE WILL PROVIDE THE MEANS FOR FIELD IMPORT SPECIALISTS AND NATIONAL IMPORT SPECIALISTS TO ELECTRONICALLY COMMUNICATE CLASSIFICATION, VALUE, ADMISSIBILITY, AND STATISTICAL INFORMATION TO EACH OTHER. IT WILL ALLOW US TO: MORE EFFICIENTLY TRACK DIFFERENCES IN CLASSIFICATION AND VALUE, PROVIDE ON-LINE RESEARCH AND QUERY CAPABILITIES, ELIMINATE DUPLICATE PROCESSING OF REPORTS FROM SEVERAL PORTS, AND PROVIDE AUTOMATED COMMUNICATION OF HISTORICAL RECORDS OF IMPORTATIONS. ON THE WHOLE, IT WILL ENHANCE EQUITABLE TREATMENT FOR THE TRADE BY SPEEDING CUSTOMS RESOLUTION OF QUESTIONABLE ISSUES AND PROBLEMS. THE MODULE IS ALSO CRITICAL TO OUR PLANS FOR PROVIDING IMPORTERS WITH PRE-ENTRY CLASSIFICATIONS. THE MAJOR PART OF THE MODULE IS PROJECTED FOR COMPLETION IN 1989.

AUTOMATED BROKER INTERFACE

AUTOMATED BROKER INTERFACE (ABI) PERMITS BROKERS AND IMPORTERS TO INTERFACE DIRECTLY WITH THE CUSTOMS NATIONAL COMPUTER IN ORDER TO TRANSMIT ENTRY DATA ON IMPORTED MERCHANDISE. THE ABI ELIMINATES THE KEYING OF REDUNDANT DATA, WHICH IS A MAJOR STEP IN REDUCING THE MANUAL PREPARATION OF IMPORT DOCUMENTATION. THROUGH ABI, CUSTOMS IS ELECTRONICALLY LINKED WITH THE IMPORTING COMMUNITY, THROUGH DIRECT COMPUTER-TO-COMPUTER INTERFACE AMONG BROKERS, IMPORTERS, PORT AUTHORITIES, SERVICE BUREAUS, AND THE CUSTOMS SERVICE DATA CENTER. AT THIS TIME, OVER 65 PERCENT OF TOTAL ENTRY SUMMARIES ARE PROCESSED THROUGH COMPUTERS. BASED ON EXTENSIVE BROKER SURVEYS, THE POTENTIAL ENTRY VOLUME FOR ABI IS ABOUT 75 PERCENT TO 85 PERCENT. UNDER THESE CIRCUMSTANCES, ABI PROVIDES A UNIQUE OPPORTUNITY FOR BOTH THE TRADE COMMUNITY AND CUSTOMS TO IMPROVE THEIR RESPECTIVE PROCESSING BY THE ELECTRONIC INTERCHANGE OF DATA.

AUTOMATED MANIFEST SYSTEM

THE AUTOMATED MANIFEST SYSTEM (AMS) IS BOTH A CUSTOMS CARGO ENFORCEMENT SYSTEM AND A CARGO RELEASE NOTIFICATION SYSTEM. THE AMS IS A MEANS OF SPEEDING THE FLOW OF CARGO THROUGH AN ELECTRONIC RELEASE NOTIFICATION SYSTEM AND REDUCING PAPERWORK FOR BOTH CARRIERS AND CUSTOMS BY DECREASING THE NUMBER OF DISCREPANCY REPORTS AND IN-BOND DOCUMENTS REQUIRED.

SIXTEEN CARRIERS, FOUR PORT AUTHORITIES, AND SIX SERVICE CENTERS ARE NOW FULLY OPERATIONAL AS AMS PARTICIPANTS. THE AMS IS CURRENTLY PROCESSING 46 PERCENT OF THE TOTAL SEA BILLS OF LADING HANDLED BY CUSTOMS. IMPORTERS, BROKERS, CARRIERS, PORT AUTHORITIES, AND OTHER GOVERNMENT AGENCIES ARE ALL BENEFITING FROM GREATER CONTROL, BETTER COMMUNICATION, AND SPEEDIER PROCESSING OF IMPORTED CARGO. CUSTOMS ENFORCEMENT CAPABILITIES ARE ALSO ENHANCED BY EARLY ACCESS TO THIS ELECTRONIC DATA.

CARGO SELECTIVITY

THE CARGO SELECTIVITY MODULE IS DESIGNED TO IDENTIFY HIGH-RISK AND LOW-RISK ENTRIES FOR QUICK PROCESSING WITH SUBSTANTIAL SAVINGS IN PERSONNEL RESOURCES. CARGO SELECTIVITY IS CURRENTLY OPERATING IN 146 PORTS THROUGHOUT THE UNITED STATES. CARGO SELECTIVITY HAS BEEN ENHANCED TO INCORPORATE MORE DATA AND A HISTORY FILE WHICH WILL PROVIDE A COMPREHENSIVE TRACK RECORD OF IMPORTERS AND COMMODITIES. DISCREPANCIES FOUND DURING CARGO EXAMINATION CAN BE WRITTEN INTO THIS HISTORY FILE. ULTIMATELY, THE SYSTEM WILL PERMIT US, THROUGH THE USE OF PRE-PROGRAMMED CRITERIA, TO PROCESS AND LIQUIDATE SELECTED ENTRIES WITH A MINIMUM OF HARD COPY DOCUMENTATION.

DAY ONE

IN FY 1987, WE ESTABLISHED THE DAY ONE TASK FORCE TO LOOK AT CUSTOMS PROCEDURES, PRACTICES, SYSTEMS, AND ORGANIZATIONS WITH A FRESH PERSPECTIVE AND TO DEVELOP MODERN APPROACHES FOR ACCOMPLISHING CUSTOMS MISSION. SINCE THEN, THE DAY ONE GROUP HAS

PILOTED SEVERAL SUCCESSFUL INITIATIVES INCLUDING: A HYBRID INSPECTOR/IMPORT SPECIALIST POSITION, CALLED THE "TRADE INSPECTOR," IN THE NEW YORK REGION; EXPANSION OF TWO LOCAL PILOT TESTS OF THE ONE-STOP QUOTA PROCESSING CONCEPT TO 20 LOCATIONS; PILOT TESTED A PAPERLESS ENTRY PROCESSING CONCEPT AND CONVERTED IT TO A NATIONAL SYSTEM; INITIATED PILOTS THAT TEST THE VIABILITY OF ELIMINATING PAPER ENTRY SUMMARIES CORRESPONDING TO GOODS RELEASED TO ABI PARTICIPANTS VIA QUE LINE RELEASE SYSTEM; INITIATED FORMS ELIMINATION, REROUTING AND DATA CAPTURE NEGOTIATIONS WITH A VARIETY OF OTHER AGENCIES TO ASSIST CUSTOMS IN GOING PAPERLESS; AND CONTRACTED FOR THE SURVEY AND PRODUCTION OF A REPORT TO SERVE AS A ROADMAP FOR CUSTOMS COMMERCIAL PROCESSING IN THE 21ST CENTURY.

FROM THE AFOREMENTIONED REPORT, CUSTOMS IS PURSUING 18 OPPORTUNITIES TO IMPROVE ITS SERVICE AND STREAMLINE ITS PROCESSES. THE MOST SIGNIFICANT OPPORTUNITIES BEING PURSUED ARE THOSE WHICH ADDRESS IMPROVING CUSTOMS CLASSIFICATION UNIFORMITY, THE USE OF ELECTRONIC INTERCHANGE (EDI) FOR REPLACING PAPER DOCUMENTS WITH ELECTRONIC DATA, AND A CONCEPT KNOWN AS "TRIANGLE PROCESSING." IN THE WORLD ARENA, U.S. CUSTOMS HAS TAKEN THE LEAD IN THE DEVELOPMENT AND TESTING OF THE GLOBAL EDI STANDARD KNOWN AS UN/EDIFACT (UNITED NATIONS ELECTRONIC DATA INTERCHANGE FOR ADMINISTRATION, COMMERCE, AND TRANSPORT).

TRIANGLE PROCESSING

THIS OPPORTUNITY, DESIGNED TO ALLOW ENTRIES AND E[illegible] SUMMARIES TO BE FILED AT SEPARATE LOCATIONS FROM WHERE [illegible]DS ARRIVE, RELIES ON THE USE OF ELECTRONIC DATA. WITH THE CONCURRENCE OF THE BROKERAGE COMMUNITY, A PILOT TEST OF TRIANGLE PROCESSING BEGAN IN THE NEW YORK REGION ON OCTOBER 17, 1988. THE TEST INVOLVES ONE LARGE, AUTOMATED NEW YORK AREA BROKER, SIX OF ITS NATIONAL ACCOUNTS, AND ELEVEN CUSTOMS PORTS. WE WILL ASSESS THE VIABILITY OF TRIANGLE PROCESSING BASED ON RESPONSES TO QUESTIONNAIRES WE HAVE DISTRIBUTED TO PILOT PARTICIPANTS AND THE PORTS THAT ARE INVOLVED. COMPLETION OF THE EVALUATION AND DEVELOPMENT OF AN ACTION PLAN FOR EXPANDING TRIANGLE PROCESSING IS TARGETED FOR FEBRUARY 24, 1989.

HARMONIZED SYSTEM IMPLEMENTATION

REPLACING THE TARIFF SCHEDULES OF THE UNITED STATES (TSUS) WITH THE HARMONIZED TARIFF SCHEDULE (HTS) OF THE UNITED STATES HAS BEEN A MAJOR PRIORITY FOR CUSTOMS. THE HTS IS INTENDED TO PROVIDE THE U.S. AND OTHER TRADING NATIONS WITH A COMMON BASIS FOR DESCRIBING AND CODING BOTH IMPORTED AND EXPORTED MERCHANDISE, WHICH WILL RESULT IN GREATER UNIFORMITY IN THE CLASSIFICATION OF GOODS. IN ACCORDANCE WITH THE STATUTE, THE HARMONIZED SYSTEM WAS IMPLEMENTED ON JANUARY 1, 1989, AFTER EXTENSIVE PREPARATION BY THE U.S. CUSTOMS SERVICE. PREPARATIONS FOR THE IMPLEMENTATION INCLUDED NATIONWIDE TRAINING FOR ALL CUSTOMS PERSONNEL INVOLVED IN THE PROCESSING OF COMMERCIAL SHIPMENTS AS WELL AS TO THE PUBLIC, OTHER GOVERNMENT AGENCIES AND VARIOUS TRADE ASSOCIATIONS.

TO ASSIST THE IMPORTING PUBLIC IN THE TRANSITION TO THE HTS, WE HAVE BEEN ISSUING TARIFF CLASSIFICATION RULINGS THIS PAST YEAR UNDER THE HTS AND MAKING RULINGS PACKETS AVAILABLE. THE HTS IMPLEMENTATION HAS ALSO REQUIRED COMPREHENSIVE REVISIONS TO EXISTING CUSTOMS REGULATIONS, WHICH WILL BE AN ONGOING EFFORT. INFORMATION ON THE HARMONIZED SYSTEM HAS ALSO BEEN DISTRIBUTED TO THE GENERAL PUBLIC, ALERTING THEM TO THE POTENTIAL EFFECTS OF THE IMPLEMENTATION OF THE NEW SYSTEM.

INTERNATIONAL AFFAIRS

CUSTOMS RELATIONSHIPS WITH ITS FOREIGN COUNTERPARTS IS CRUCIAL. CUSTOMS IS MAKING STEADY PROGRESS IN OBTAINING BILATERAL AGREEMENTS. CURRENTLY, THERE ARE FORMALLY SIGNED AGREEMENTS WITH: FRANCE, AUSTRIA, GERMANY, MEXICO, CANADA,

ITALY, KOREA, CYPRUS, SWEDEN, AND FINLAND. NEGOTIATIONS ARE ONGOING WITH SPAIN, AUSTRALIA, AND THE UNITED KINGDOM. AGREEMENTS ARE EXPECTED TO BE SIGNED IN 1989 WITH GREECE, NORWAY, BELGIUM, AND DENMARK.

OVER THE PAST 4 YEARS, CUSTOMS HAS PARTICIPATED IN INTERAGENCY AND INTERNATIONAL MEETINGS TO NEGOTIATE AN INTERNATIONAL CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES. FINAL NEGOTIATIONS ON THE CONVENTION WERE HELD IN VIENNA, AUSTRIA, FROM NOVEMBER 26 TO DECEMBER 20, 1988. A STRONG CONVENTION WAS PRODUCED WHICH THE UNTIED STATES SIGNED ON DECEMBER 20, 1988. THE CONVENTION WILL BE SENT TO THE SENATE FOR RATIFICATION. SEVERAL ARTICLES IN THE CONVENTION ARE OF INTEREST TO CUSTOMS INCLUDING THOSE ON ASSET FORFEITURE, COMMERCIAL CARRIERS, MAIL, FREE TRADE ZONES, LAW ENFORCEMENT ASSISTANCE AND COOPERATION, AND PRECURSOR CHEMICALS.

THE U.S. CUSTOMS SERVICE WILL BE HOSTING THE 1989 PLENARY MEETINGS OF THE CUSTOMS COOPERATION COUNCIL (CCC) THIS SUMMER. HOSTING THESE MEETINGS IS IMPORTANT TO BOTH THE TREASURY DEPARTMENT AND THE U.S. CUSTOMS SERVICE. HOSTING THE CCC MEETINGS PROVIDES A PRACTICAL MEANS OF PROMOTING THE IMAGE OF TREASURY AND CUSTOMS, ESPECIALLY SIGNIFICANT DURING CUSTOMS BICENTENNIAL. IT ALSO PROVIDES AN OPPORTUNITY TO PROMOTE OUR FACILITATION, TRADE AND ENFORCEMENT EFFORTS IN THE LARGER INTERNATIONAL COMMUNITY.

USER FEES

CURRENTLY, CUSTOMS COLLECTS USER FEES FOR A VARIETY OF SERVICES MANDATED BY THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985 (COBRA). THE COBRA FEES WERE EFFECTIVE ON JULY 7, 1986, AND COVER SERVICES PROVIDED PRIMARILY FOR CONVEYANCE (TRUCKS, RAILCAR, VESSELS, PRIVATE YACHTS/AIRCRAFT, ETC.) AND PASSENGER-RELATED (AIR & SEA) CUSTOMS PROCESSING. ON DECEMBER 1, 1986, AN ADDITIONAL USER FEE WAS MANDATED BY THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 (OBRA) TO COVER CUSTOMS COSTS OF COMMERCIAL MERCHANDISE PROCESSING. THE MERCHANDISE PROCESSING FEE (MPF) IS AN AD VALOREM FEE OF 0.17 PERCENT ASSESSED ON THE VALUE OF COMMERCIAL MERCHANDISE ENTRIES.

IN RESPONSE TO COMPLAINTS FROM MEMBER NATIONS OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT) ORGANIZATION, THE MPF WAS GENERALLY FAULTED BECAUSE OF THE AD VALOREM NATURE OF THE FEE AND TO THE EXTENT THAT IT PRODUCED EXCESS CHARGES FOR CUSTOMS PROCESSING.

IN ORDER TO COMPLY WITH THE GATT DECISION, THE ADMINISTRATION WILL BE SUBMITTING FOR FY 1990 LEGISLATION PROPOSING THAT THE AD VALOREM RATES BE REPLACED BY A TRANSACTION-BASED FEE. AS CURRENTLY ENVISIONED, THIS NEW FEE WILL BE TAILORED TO CUSTOMS PROCESSING ACTIVITIES AND FAIRLY REPRESENT THE COSTS OF THESE OPERATIONS.

CONCLUSION

IN CARRYING OUT ITS BORDER-PROTECTION MISSION, CUSTOMS MUST BALANCE THE DICTATES OF ENFORCEMENT WITH THE REQUIREMENT TO FACILITATE THE LEGITIMATE MOVEMENT OF PASSENGERS AND CARGO INTO THE UNITED STATES. MAINTAINING THIS SOMEWHAT DELICATE BALANCE REQUIRES THAT CUSTOMS UTILIZE ALL AVAILABLE TECHNOLOGY IN THE MOST EFFICIENT MANNER AND THAT IT CLOSELY COORDINATE WITH ALL PARTICIPANTS IN THE WORLD TRADE COMMUNITY. I BELIEVE CUSTOMS HAS MADE GREAT STRIDES.

THIS CONCLUDES MY INTRODUCTORY STATEMENT.

I AM READY TO DISCUSS THE DETAILS OF THE REQUEST AND ANSWER YOUR QUESTIONS AND THOSE OF THE SUBCOMMITTEE MEMBERS.

Chairman GIBBONS. I do not think I can argue with that at all.

Mr. von Raab, I am about to spring another idea on you that I have talked about. You can respond if you want to. I am going to suggest that in international airline flights that we go to a system of preclearance in the last foreign airport of departure to this country. I realize it is complicated, but there is something so unique about airplanes, about their control and about their attractiveness to some unbalanced people, that I feel that it is far wiser to inspect them before they depart than try to pick up the wreckage after they have had trouble.

I realize that that would cause a dislocation of some of your personnel and that it would cost more money. But I do not believe that this form of insanity that we have around known as terrorism is going to go away any time soon. In fact, it looks like we are in for another 500 or 1,000 years of it, or something like that to me.

Have you all thought about this? Have you determined in any rough manner about how much it would cost?

Mr. VON RAAB. The answer is we have thought about it. In terms of how much it would cost, obviously it would be a question of where we would place the officers abroad. And so obviously the cost would be a function of how many other places we would have to put our officers.

Chairman GIBBONS. If you put them at the major international airports of departure and where the scheduled commercial flights originate, with some flexibility, but if someone is flying their private jet from Europe to the United States, it is probably not too inconvenient to ask them to go by Heathrow or Gatwick or someplace like that, or even Shannon to be checked out. And certainly all airliners—I think I have named them, the major airports over there. Of course, you have to pick up Paris, you would pick up Brussels, you would pick up Frankfurt, you would pick up a number of those. In some cases, the last point of departure would be, for instance, Rome or Madrid or something of that sort.

But it just does not make any sense that we try to inspect wreckage on the bottom of the ocean or in some Scottish field to determine whether or not somebody put a lot of contraband on a plane. We could do it in a rather civilized manner and eliminate the temptation of either carrying aboard or putting in the hole that kind of contraband.

Mr. VON RAAB. The——

Chairman GIBBONS. And we could save on this end—all that the plane would have to do is make sure that it did not land anywhere in between and reload or—the way planes are kept under traffic control, that is no problem at all. If any plane were forced down someplace and had to be reinspected when it got here, we would have some kind of small inconvenience. That does not happen very often.

Mr. VON RAAB. The user preclearance as a facilitative device is effective.

Chairman GIBBONS. Yes, sir.

Mr. VON RAAB. And that was its original purpose when it was started back in the early fifties. The major difference in the world environment to Customs is not just the terrorist issue, but it is narcotics——

Chairman GIBBONS. Certainly.

Mr. VON RAAB [continuing]. Enforcement. And we have a serious problem maintaining the preclearances that we have.

For example, I do not know if you are aware, but recently the Canadian Government informed us that we have no authorities in Canada. So we are now nothing but meeters and greeters in Canada, and we must now actually take a good look to see whether our officers are performing any function of any value to the United States Government in Canada apart from providing a hearty welcome to people who are flying here.

It is that problem of our inability to exercise any authority once we leave the United States that renders us, we think, very vulnerable to narcotics smuggling.

On the bright side, however, I would say that we have a master plan for airports in the 1990's which I would be happy to give to you personally or to the committee for the record, which ever you like. We are beginning to consult with the airlines and their associations, and I believe if you review it not even carefully, but summarily, you would see it would have the effect of considerably reducing some of the unpleasantness that exists at U.S. airports. By the way, I hope that some of your constituents have noted that has at least improved somewhat over the past 7 years. We have tried very hard.

Chairman GIBBONS. It has, it has.

Mr. VON RAAB. And before you would move to—ahead too smartly and quickly on preclearance, I would ask that you have your staff at least speak to us about some of the thoughts that we have about how we can make life a little more pleasant on the domestic side for people returning to the United States.

Chairman GIBBONS. Well, I am going to introduce a bill some time this year—and I will, of course, send you a copy of it, and I will have a hearing—on preclearance, not only with the idea of accomplishing your normal Customs role, such as you do now and as you may anticipate in the future, but to make sure that at least the international flights are somewhat safer than they now are, and that there is no—there is no serious temptation on the part of terrorists to inflict their will on people flying to the United States.

I would hope that other nations would do the same for flights leaving the United States, international flights. It seems to me that we—you mentioned in your statement that times have changed. Times sure have changed. And an airplane being so unique, it is not like a ship. Most people are not going to be able to sink a ship with a single bomb they can get on board, or they are not going to be able to hijack a train or a bus or something like that very successfully. But aircraft are so unique.

Mr. VON RAAB. I would point out that one of the very important logistical problems with preclearance is the issue of transit—and as a matter of fact, I think it is clear, at least from my information, that the bomb that went off on Pan Am 103 could very likely come from an airport that had no screening but would have been transferred at Heathrow Airport, and that kind of suitcase would never be looked at because it is almost impossible once you are on the tarmac to sort out a suitcase that has been through an airport with an acceptable screening process and one that has not.

And that is the same kind of problem we would have with narcotics. I mean, people would attempt to use preclearance sites as clearinghouses for narcotics smuggling.

So certainly we would be happy to work with your staff. But I at this point would have to express grave reservations about the usefulness of preclearance as an effective tool to deal with narcotics smuggling.

Chairman GIBBONS. Well, a bag in transit, I would not expect it would go on an international flight until it had been cleared by the appropriate United States—any piece of freight just changing planes in Heathrow or Gatwick or something like that, would be subject to preclearance. We would not just wave at it because it happened to——

Mr. VON RAAB. Under those conditions that you are describing, the personnel necessary would be considerably greater. Because as it is right now, with preclearance, we only inspect what is physically presented to us by the passenger, which would mean that all suitcases that right now, for example, would go from Frankfurt through London to Dulles, would have to be pulled off and re-presented to Customs. I am concerned about some of the logistics here——

Chairman GIBBONS. Well, you have to re-present them to Customs when you get here anyway.

Mr. VON RAAB. But they are all presented at the same time.

Chairman GIBBONS. Well, it is just a matter of where you do the work. It is not a question of time. It is a question of if you do the work here or do the work there.

Mr. VON RAAB. And the other issue, of course, is the commercial cargo contained on the planes.

Chairman GIBBONS. It has got to be inspected——

Mr. VON RAAB. It has to be inspected abroad as well.

Chairman GIBBONS. It has got to be inspected over here.

Mr. VON RAAB. It is easier to inspect it over here, it really is. Because we are on our home ground here. I mean, one of our problems with Canada, for example, is in spite of years and years of working with Canada, they really do not provide us with adequate facilities. And so we are stuck there. We have to look at suitcases in corridors.

Chairman GIBBONS. Well, the Canadian—you know, nobody in his right mind could defend the kind of agreement we have got with Canada on airlines.

Mr. VON RAAB. I am glad to hear you say that.

Chairman GIBBONS. It is no—that to me I hope is one of the things that we can overcome in our free trade arrangement with Canada is air access between the two countries. It is really antiquated. If you go from Washington to almost anyplace in Canada, you have got to go through some intermediate city—I will not even mention them—and change planes. I do not know how we got that made at each other. But we really have inflicted——

Mr. VON RAAB. What happened is that we provided free clearance for planes coming down south, but they do not provide preclearance for planes going north.

Chairman GIBBONS. Well, it has got to work.

Mr. VON RAAB. Well, we certainly would look forward to working with your staff and looking at your proposals.

Chairman GIBBONS. All right. Now, I know there are a group of Senators who are constantly pushing the counting of every handkerchief, napkins, sock, underwear, everything else, off on your agency under the guise of the Textile Agreement enforcement. As a proportion of all the work you do, how much time do you spend just enforcing the Textile Agreement?

Mr. VON RAAB. That is a question that has never been put to me before. I would have to guess that it is—we are making a very rough guess, but that is really what you are looking for.

Chairman GIBBONS. Sure.

Mr. VON RAAB. We would estimate that of our 5,000 inspectors—actually a little more than that—that maybe 10 percent of them spend their time working on the textile inspections and agreements and all the aspects of textile importation. And of our import specialists, we would estimate that probably 20 percent of them are devoted to that, and then add some factor for management. That is our best guess from right here.

Chairman GIBBONS. It would appear to me that a disproportionate amount of your work on a volume basis or a money basis is devoted to just the enforcement of the Textile Agreement. Is that right?

Mr. VON RAAB. It is a disproportionate amount of work, but it is disproportionate because of gaming and attempting—and in many cases overtly violating the law on the parts of those countries that should be obeying our agreement.

So I agree with you, that it is unfortunate that we have to spend all that time on it, but we cannot trust the manufacturers of textiles, particularly the exporters, in the Far East to follow our agreements. And so our only recourse is essentially to ensure the law is enforced. But I agree with you, it is much too much time.

Chairman GIBBONS. How about the steel agreement?

Mr. VON RAAB. The number of personnel devoted to that is really very, very low. It is handfuls of people.

Chairman GIBBONS. The steel industry here does not protest that you are not doing——

Mr. VON RAAB. No; because we have gotten the attention of a lot of the steel exporters. We have gotten much better equipment there. We have much better trained people. And it is a smaller problem in terms of the volume of what is coming in. I mean, steel shipments are large, whereas textile shipments are coming in the millions and millions. And so we have many more people that are responsible for that.

Chairman GIBBONS. OK, let us see, Mr. Pease.

Mr. PEASE. Mr. Chairman, thank you very much.

And thank you very much, Mr. von Raab, for being with us today. You certainly present a picture to this committee of a very competent administrator. And it is a pleasure to have you here. And we know that your agency is struggling under a terrific workload.

I am very pleased for one thing in relation to the President's flexible freeze proposal. That puts much of your operation in the black box with everybody else and does not require you to come up

here and tell us how you can do a better job with 1,000 fewer people. It must be a relief for you not to have to do that as well.

I would like to ask a couple of questions. As you have pointed out in your testimony, the Customs Service has a dual role of drug enforcement and also business facilitation and trade. Are those two responsibilities clearly separated in Customs so that we are not robbing Peter to pay Paul? I noticed in one of the documents here that you are proposing to transfer people from the commercial side to the drug enforcement side?

Mr. VON RAAB. Well, there are a number of practical constraints built on shifting resources without congressional approval, which is really what you talking about.

Mr. PEASE. Yes.

Mr. VON RAAB. One is our organization as such. Lynn Gordon on my right has responsibilities entirely in the commercial area whereas the enforcement office has responsibilities in the other. And therefore, they will compete in my office for resources, so they are each represented. Mr. Banks, on the other hand, has a dual responsibility, as his inspectors not only are responsible to inspect cargo, but they are responsible to keep it moving wherever possible.

More important, I think is that the budget lines that are set up do distinguish between commercial operations, enforcement operations, inspection and control operations, where we are not allowed under law to transfer more than 1 percent of our moneys from one to the other. And that is a very effective constraint on anything that we would want to do that the Congress would not approve of.

So the major shifts that you would see would come out of a budget request rather than some hidden or unapproved move by the Customs Service itself.

Mr. PEASE. And——

Mr. VON RAAB. We also try to work very closely with our committees and tell them what we are doing to ensure that they are satisfied that not only are we meeting the letter of the law but the spirit of the law as well.

Mr. PEASE. I see.

Our staff reviewed your budget submission and noted that you propose to transfer 396 positions from commercial operations to the enforcement areas. Is that correct?

Mr. VON RAAB. That is the budget proposal, that is right.

Mr. PEASE. So there will be a net decrease in the commercial operations if your budget is approved as submitted?

Mr. VON RAAB. That is right.

Mr. PEASE. And yet you are handling more and more commercial traffic every year. Do you attribute automation to your——

Mr. VON RAAB. There are a number of reasons why we feel we can do this. One is our automation has, we believe, freed up resources which then would in effect be those kinds that we could move to another area. The President has required us to move more resources into enforcement, particularly our container effort.

We believe there are savings in the commercial automation effort, and we believe there are savings in some contracting out schemes that we have been looking at. Then, part of the proposed

shift of resources are individuals who really have a dual responsibility to begin with; they are Mr. Banks' inspectors.

And as I tried to state—maybe not persuasively—in my statement, when we do move inspectors to look at more cargo, it should have a double effect. We should move the low-risk cargo more quickly because there are men and women to work on it, and at the same time they would be able to spend more time on the high risk.

Our theory is that one of the things that we had to do is to separate the high risk from the low risk and let the low risk move with lightning speed with very little Customs involvement and concentrate our resources on the high risk——

Mr. PEASE. On the high risk.

Mr. VON RAAB. On the high risk.

Mr. PEASE. All right. This committee last year approved the United States-Canada Free Trade Pact. During the consideration of the Free Trade Agreement, I expressed a good deal of concern about the rules of origin in the Free Trade Agreement and the concern about transshipment of products made outside of Canada through Canada into the United States market.

Very shortly we will hear testimony from the Treasury Employees' Union which on the very first page states as follows:

> Existing staff on the northern border are so overworked that it is a delusion to think that the FTA rule of origin can be enforced without significantly increased personnel. Unless Congress acts, Canada will become a way station for trans-shipment of third-country products into the U.S. market.

Now, that is an alarming statement-to me. Do you have some words of reassurance?

Mr. VON RAAB. Well, I think it may be a bit hyperbolic. But there is no question but that one of the results of the Canada Free Trade Agreement is not to reduce procedures at the border. I mean, if anyone thought that was happening, they are wrong. I mean, it is reducing tariffs, and it is reducing some of the other sorts of legal constraints or fiscal constraints on trade between the United States and Canada. But it did not address procedures.

If anything, some of our responsibilities have increased because we are now responsible for collecting statistics on goods crossing the border which are duty free, which previously we did not really look at at all, and now we are expected to keep statistics on these things.

There is a concern about rules of origin. And we are working very hard with the Canadian authorities as well as the trade authorities within the United States to ensure that we have an enforcement rule of origin scheme. They tried to put that into the Free Trade Agreement, but it will take some careful implementation.

I am nervous about the potential for violations and for the use of Canada as a place, if you will, to launder textiles. I do believe, however, that there is a high motivation and a desire by the Canadian officials to work with us and to address that.

So in one respect, the statement is accurate in that there is a potential for a problem. I think it is inaccurate in that I think working well with the Canadian authorities, we will be able to craft a joint effort to alleviate the problem. But for a short time, we

always have to be careful when we change the ground rules that they are not abused.

Mr. PEASE. My chief concern last year was automobiles, and to a lesser extent, steel. Automobiles are probably a little easier to track than textiles.

Mr. VON RAAB. Right. And we have—always had very free and, if you will, moderate low or nonexistent tariff arrangements with Canada on automobiles.

Mr. PEASE. I see. OK, thanks.

Mr. VON RAAB. We have practice with automobiles. We do not with textiles and some other things.

Mr. PEASE. In your testimony you made much of the fact that our Customs laws are essentially 200 years old, better suited to 19th century than to the 20th century or to the 21st, and said that what we need is a modernization of customs laws.

Mr. VON RAAB. That is right.

Mr. PEASE. A thorough going overhaul.

Mr. VON RAAB. Yes.

Mr. PEASE. My question is who is going to initiate that overhaul? Obviously Congress could do that by setting up a task force. Often we get underway on something like that by way of an outside group, the administration, or some other group.

Do you feel strongly enough that you expect to set in motion some procedure for recommending a change?

Mr. VON RAAB. We have already initiated that by act. We have a number of programs in place that are rubbing up against some of the archaic practices. And we have had to use our chief counsel with great adeptness in order to ensure that we can move forward without violating the law. We are planning to work very closely with the brokerage and importing communities.

And as a matter of fact, just recently in a speech that I gave in Tampa, I announced the establishment of what I call the 21st century committee, which would be a committee consisting of some of the more clever people at Customs and some of the more clever people in the brokerage community and in the importing community whom I would expect would really take a good look at some of the procedural aspects of our laws and recommend a good and clean and useful and modern series of changes to laws which were basically no different from those which resulted in the dumping of tea into Boston Harbor.

We do not want to have to do that sort of thing. We want to have a modern package. So we are starting an effort. We obviously hope to and expect to involve the members of the staff of this committee because ultimately it will be something that would require some statutory change.

Mr. PEASE. When would you expect to be in a position to recommend changes in the statute?

Mr. VON RAAB. Well, we have a number of ideas right off the bat, but I would say that we should probably work through the summer and would be prepared to have some fairly indepth discussions with your staff toward the end of this calendar year.

Mr. PEASE. So that in 1990 we might really get down to making some of those changes.

Mr. VON RAAB. Yes; I would hope so.

Mr. PEASE. A recurring concern in past years has been the amount of overtime worked by Customs officers, particularly in the New York area. What is happening with overtime these days?

Mr. VON RAAB. Overtime for the most part is incurred by inspectors. Mr. Banks has some data on that.

Mr. BANKS. Overtime costs have generally been rising, approximately nine percent over the last year. It is a lot due to the fact that there was a passage of the user fee laws, and the users do expect additional services to be rendered to them. We are trying to comply with as many of those requests as possible.

So there have been some increases in the overtime.

Mr. PEASE. Is that a 9-percent increase in overtime on the part of essentially the same number of employees? Are they working even more overtime than they did before?

Mr. BANKS. Approximately, yes, sir. There are some increases in the number of employees, but overall, it is marginal.

Mr. PEASE. How many hours a week do inspectors work in the New York area?

Mr. BANKS. That is very difficult to say. I do not have the answer off the top of my head. I think that they could anticipate that they probably would work an additional shift maybe two or three times a week. And that is a guess.

Mr. PEASE. I am told from the testimony of the Treasury Employees Union that they on the average can expect to work three Sundays out of four.

Mr. BANKS. That may very well be.

Mr. PEASE. Do you think that is a sustainable situation? Are you happy with that or satisfied?

Mr. BANKS. Well, the airport staffing on overtime, to the best of my knowledge, has not changed dramatically over the years. You have to remember that part of that 9-percent increase also reflects a salary increase also. So it has held fairly constant. There are marginal increases. But I would be glad to provide you information for the record on this and give you more details specifically for New York.

Mr. PEASE. Now, this overtime is paid for by the commercial users.

Mr. VON RAAB. Yes; I think that is a very important factor. It used to be that the absolute amount of unreimbursed overtime was controlled by the Customs budget. And so we could say to an airline, look, you can only come in certain hours because we have planned our overtime and we are meeting certain levels, and we cannot authorize more overtime.

But now that we have a user fee that covers the overtime—by the way, that is the only thing it covers—we no longer have the option, nor do we then attempt to exercise it, to say you cannot have overtime. So therefore, it is in effect an endless stream of overtime that is available to the airlines because Customs no longer has the ability to say no.

So if they want overtime, if they want an inspector or an inspection or coverage at a particular time, we cannot turn it down. We used to be able to turn it down.

But the worst part about that is that because those moneys are not in our appropriation as such, they are not available to hire ad-

ditional inspectors. So that that free stream or free-flowing stream of moneys coming out of the user fee is only there to increase overtime and not to increase the number of inspectors. So it is a bit of a peculiar situation.

Mr. PEASE. Can we not change that statutorily?

Mr. VON RAAB. The Congress together with the President have powers to do just about what they want.

Mr. PEASE. Well, as a manager would it not make sense to you to hire people specifically to deal with extra hours requests?

Mr. VON RAAB. There is—and we believe that the user fee concept is important because as long as the user is paying for the overtime, that user is making a management decision himself that they want to pay for that. As soon as that money is in an annual appropriation which the taxpayers are paying, then you get a situation in which users are consuming a commodity in this case, Government labor, without being accountable for it.

So there is a philosophical issue there. I happen to be on the side of making the user accountable.

Mr. PEASE. No; I do not quarrel with that. If the user is going to pay for it, that is fine. But why make the user pay for somebody who is earning double time rather than another person who is hired specifically to respond to these requests for extra hours?

Mr. VON RAAB. Well, what we have done in this discussion between us is basically to come around to the other user fee, and that is the question remains as to which ways the other user fee should be made available to Customs.

I think that is the correction that you are looking for, where the user fee—the ad valorem, which totals $600 or $700 million, would be made available for a commensurate level of commercial service and staffing in the Customs budget, and you would develop a relationship between commercial use and commercial labor within Customs.

Mr. PEASE. All right. Mr. von Raab, I thank you.

I have taken far too much time. And I apologize to my colleague, Mr. Guarini.

But there is one other thing I want to bring to your attention and ask for comment more than anything else. I would not bring it up, but I think it is your bad luck that I got a letter just Friday from a constituent who came through Kennedy Airport—and this may give you a clue as to what is coming next. This person had a passport stolen in Spain and had to pay $80 at Kennedy for waiving the passport requirement.

Mr. VON RAAB. Right.

Mr. PEASE. Which he did not object to, as far as the $80 is concerned. This is a person who travels a lot, goes in and out of the United States a lot, and says:

> The personnel in charge of these operations at Kennedy Airport, unlike your regular Customs officers, who invariably from my frequent experience seem polite and professional, were haughty, lazy and utterly uncooperative. They chatted with one another while lines of people waited, while we realized we were about to miss our connection to Cleveland. When we asked if something could not be done to speed things up since we could observe through the glass partition the farcical inefficiency, we were given a rude reply.

And this concerns me even more:

I suspect that this behavior stems from those officers' attitude toward their "usual" clientele, foreigners, often third-world people. We probably experienced as U.S. citizens what those others go through. And if so, it is inexcusable.

Then he said that other people were at the airport whose function was to keep the lines in order, etcetera. They were polite and said something should be done:

You should write your Congressman for it is always like this.

Could I have your comments on that.

Mr. VON RAAB. I feel somewhat guilty by the answer I am about to give you. But you are discussing the performance of the Immigration officers at Kennedy Airport, who are in the Justice Department. Unfortunately, our Immigration procedures at our national airports are some of the most backward and inefficient that you could imagine.

I have had an ongoing debate by letter and by word with the Immigration Office. They are determined to return us to the 17th century. It does not surprise me that your constituent had a problem with them. I wish I could help them. But I have tried and I have failed. And if you yourself travel through Dulles Airport, you will see just how bad it is getting. It certainly is worth looking into.

So I make no excuses, and I would sign the same letter that your constituent signed.

Mr. PEASE. Well, thank you very much. I will seek an opportunity to testify in the Judiciary Committee when the INS budget comes up. Thank you very much.

Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you, sir,

Frank.

Mr. GUARINI. Thank you, Mr. Chairman.

With regard to what Mr. Pease just had read to you, there has been a lot of discussion in the past about combining the Immigration and the Customs into a single, individual. I know that they have worked in tandem over all the years.

Mr. VON RAAB. Right.

Mr. GUARINI. In your estimation is there a waste of Government resources having this bifurcated—having two agencies handling people as they come through the airport?

Mr. VON RAAB. Yes; there definitely is a waste.

Mr. GUARINI. Would it work well if we gave serious consideration to combining the resources?

Mr. VON RAAB. Serious consideration has been given. This is not even a partisan issue. President Carter failed and President Reagan failed. I do not mean individually, but their administrations failed in pulling this off.

Mr. GUARINI. But it is political?

Mr. VON RAAB. It is a political——

Mr. GUARINI. Turf?

Mr. VON RAAB [continuing]. Thing. Apparently it has a lot to do with your own committee jurisdictions. And neither the Judiciary Committee nor our committees want to allow the other committee to get a hold of the agency that is losing. So I think it is a super idea. We tried to do it back in 1982 or so. I think we estimated the

savings in hundreds—at least $100 million as a rough guess, probably more than that now. And it just cries out to be done. But——

Mr. GUARINI. So America would be better off if this were done? Maybe it will take a little while longer, but eventually we will get to that millennium?

Mr. VON RAAB. I would state, however, that the Customs Service would be the one that should manage the thing.

Mr. GUARINI. Not under your stewardship probably.

Let me talk to you about drugs a bit. Are we making any progress on the war on drugs?

Mr. VON RAAB. Well, that is a very general statement. And if you take the war as a general proposition, no; the answer is we are not.

Mr. GUARINI. Is there more stuff coming over than ever came over before?

Mr. VON RAAB. Yes. There is more entering the United States. You know, there is a bigger problem in our cities. You would be foolish to sit there and watch the 6 o'clock or 7 o'clock news and see the disasters in Los Angeles, New York, the District of Columbia. However, there are programs within the drug war, if you will, theaters in the war that are doing well.

Mr. GUARINI. Well, is the air and sea interdiction program better?

Mr. VON RAAB. Air and sea interdiction is doing very well. If you take a look at the United States, you would notice that there really is very little air smuggling taking place into Florida now. Because of the efforts we have made there, they are dropping their loads into the Bahamas. In turn, they are dropping their narcotics loads farther and farther from our shores because our sea effort has improved. The Coast Guard's effort on the high seas, with respect to marijuana, has been very successful.

We are really, I think, by 1992—if you want to talk about the other 1992 problem—we are going to see, I would say, probably 80 to 90 percent of our cocaine attempted to be shipped into the United States by containers. I think that the Justice Department's law enforcement effort in terms of investigations has been very good. It has broken up a lot of conspiracies, arrested a lot of very important people who have caused enormous pain and suf ng to the middle-level types as well as some kingpins.

Where we have failed, basically, is abroad where the amount that is being grown today is 20 times what it was 7 years ago. And when you face that sort of a threat, I do not care how much better you get, you are just facing an enormous wall of coke coming in.

Mr. GUARINI. Well, when you talk about containers, you think that is going to be more and more the conveyance of the future.

Mr. VON RAAB. Yes. And it already is. We are already seeing that.

Mr. GUARINI. Does that mean we will have a need for more canines, more dogs?

Mr. VON RAAB. We are planning to deploy, I think it is up to 100 more dog teams over the next couple of years.

Mr. GUARINI. They have proven to be very effective.

Mr. VON RAAB. They are very good; they really are. What God made is a lot better than what man has been making over the past 6 or 7 years.

Mr. GUARINI. Now, when I go to the border, I see trucks, huge produce, tomato trucks lined up for miles to get through the checkpoint coming into the United States. I often wonder, Commissioner, how effective could we be, regardless of our technology, regardless of dogs, regardless of what we try to do, in stopping this, because the produce has to come through. Some of these trucks are huge trailer trucks, and you could hide anything in these trucks that you want to hide. By dint of the nature of the cargo and the pressure of the traffic, it seems to me that anybody could do what they want with impunity getting across the border.

Mr. VON RAAB. That is a very difficult question. As such, I would ask Mr. Banks to try to answer that.

Mr. GUARINI. I do not know if there is an answer to it, but I wish there were something that could be done.

Mr. Banks.

Mr. BANKS. There is not an easy answer on the thing. Probably the primary key in having success in the container enforcement and truck enforcement effort is through our selectivity systems, our targeting, to figure out which containers and which trucks are we going to go after. Once we have targeted them, then we have got to have a proper location in which to do examinations, and do examinations rapidly to be able to off-load them.

Mr. GUARINI. But, at the most, you could only do a very, very small amount. As I see it, the traffic is miles long trying to get into the United States, at 9 o'clock, 8 o'clock in the morning. We have got to keep the traffic going.

Mr. BANKS. There is no question there are lines, but we are examining 15, 20 percent of the containers at some of the larger border crossings.

Mr. GUARINI. What interfacing will you be doing with the drug czar, and how will that change your operation?

Mr. VON RAAB. As you are no doubt aware, the drug czar made it a practice not to involve himself in the development of policy or the discussion of policy with those who were running the agencies until he was confirmed. He has now begun to discuss issues with those individuals, like myself, who run the drug enforcement agencies.

The mechanism that he is going to establish to do this is not known to me, and I think he is still working on it. I know Bill Bennett, and I have no problem with being comfortable that Customs' thoughts and needs will be fully addressed by his office.

Mr. GUARINI. But there is always turf and jurisdiction, and, of course, the idea is that he will be able to pull everything together and coordinate it.

Have you had good cooperation with the local and State authorities in all your dealings?

Mr. VON RAAB. The Customs Service has made it a cornerstone of its law enforcement efforts to work closely with State and local police departments and sheriffs departments. We started off with an effort in Florida which we call Blue Lightning, which is now loosely organized but a very closely associated group of all the sheriffs departments and police departments really running from Fort Pierce all the way around the other side of Florida.

To bring this issue home to you, we are working very closely with the New York State Police and the New Jersey State Police in an effort to ensure that we complement each and we work together. In many cases, we have actually designated New Jersey police officers as Customs officers, and New York State Police too.

Mr. GUARINI. You mean you deputize them?

Mr. VON RAAB. We actually deputize them, and we work together. You might find a Customs officer in a New Jersey State Police car sometimes, if they are working down along the coastline.

So it is an absolute cornerstone of our law enforcement program to work very closely with those individuals. A critical aspect of this is our asset-sharing program. As you are aware, the drug bill freed up the ability to "share assets" with State and local authorities. The Customs Service basically has a practice of giving 90 percent of any of its seizures which it made in a cooperative effort with a State organization or a city or a local organization to that organization.

In 1988, we gave out over $12 million, and we are already well past that. So it is a very important program.

Mr. GUARINI. All right. Thank you.

Let me ask just a few last questions on preclearance. You have it in the Bahamas and Bermuda. Has it been working well?

Mr. VON RAAB. And Canada.

Mr. GUARINI. And Canada, of course.

Mr. VON RAAB. Right.

Mr. GUARINI. You mentioned that before. Has it been working well in those countries?

Mr. VON RAAB. Bermuda has not been a particular problem because Bermuda is fairly isolated, and it is not an ideal transshipment point for narcotics. People in Bermuda are delightful, and so that is a fine operation.

Mr. GUARINI. So it is working well.

Mr. VON RAAB. It works well there.

The Bahamas is a problem because of the nature of the Bahamas as being an ideal transshipment point for drugs, which could then be moved to Nassau and put on our preclearance flights. In fairness to the Bahamas, they have tried to be cooperative and give us facilities that are useful, but they are very slow in coming forth with that.

We would rather not have a preclearance operation in the Bahamas, but it has been set by treaty between the United States and the Bahamas. And we will honor that treaty.

Mr. GUARINI. Have you had any information that it is not working?

Mr. VON RAAB. Well, it is hard to say it is not working.

Mr. GUARINI. Well, do you have information that there is more drug smuggling, trafficking that would be getting by that would not get by if you did not have that preclearance in the Bahamas?

Mr. VON RAAB. The numbers of people going through preclearance in the Bahamas are such right now that we are capable of managing it with our existing personnel.

Canada is another situation, because there we are just overwhelmed; we do not have the proper authorities with which to op-

erate; and we do not have the proper facilities in which we are operating.

Mr. GUARINI. But given the facilities and the personnel, you create the right environment——

Mr. VON RAAB. And the authorities.

Mr. GUARINI [continuing]. You should have no problem with preclearance in Canada, that it should work well, should it not?

Mr. VON RAAB. I have yet to see the right environment get created. These things are typically negotiated by the State Department, who wants at the end of the day an agreement at any price, and it is usually at the price that the other country has set.

Mr. GUARINI. Right. But you do not have any information that there is more drug smuggling going on through Canada as a result of your preclearance operation, do you?

Mr. VON RAAB. No; because Canada basically is not a source country for drugs. On the other hand, with London, Frankfurt, Amsterdam, you would have problems of transshipment of drugs from source countries. We do not have that transshipment problem with Canada.

Mr. GUARINI. Well, on the Pan American flight, was not the luggage transferred from one plane to another plane at Heathrow?

Mr. VON RAAB. Well, it was more than that. The actual igloo that blew up was made up in Heathrow Airport. In other words, the igloo itself was made out of—it was an empty igloo at Heathrow. A number of suitcases were put in that that came from Frankfurt; a number of suitcases were put in that that came from four other airports, including Larnaca in Cyprus.

Mr. GUARINI. So if the proper inspection had taken place as they transfer, you still would have no problem. It is just that they transferred without any inspection.

Mr. VON RAAB. Yes; I do not know where that inspection——

Mr. GUARINI. Assuming that Frankfurt was sufficient, no one even thought that it would be important to inspect.

Mr. VON RAAB. We also had suitcases from Cyprus as well.

Mr. GUARINI. Well, where they came in, when you put them into a new plane, if they are reinspected you would have no more problem than you would at any other preinspection.

Mr. VON RAAB. Understand that Heathrow has probably got one of the best inspection organizations known. We would then have to replicate that by the U.S. Customs Service.

In other words, what Heathrow has been incapable of doing at its own airport, given its own budget, the Customs Service would have to reproduce in London as a foreign organization, an inspection operation that would be better than what they now have.

Mr. GUARINI. Well, since we are going into the 21st century, I assume that we can think of a lot of new tools and designs and ways of doing things better.

Mr. VON RAAB. I hope so, and I hope that we go out and we eradicate the crops in South America. At that point, we will have less to worry about. But as long as we have this threat, we really have a concern.

Mr. GUARINI. I was recently in Caracas, Venezuela, and I was told by a DEA agent that served in the Caribbean that they

thought that preclearance would be a big plus, and that it would not interfere at all with the smuggling of drugs.

Mr. VON RAAB. Who said this?

Mr. GUARINI. The DEA who was in charge, I would say woman. There are not very many DEA people——

Mr. VON RAAB. Well, whoever that was did not know what she was talking about.

Mr. GUARINI. And she served in the Caribbean, and she told me—and I conveyed that back here—that to object to preclearance as a result of drugs is not a valid objection. That was her experience as a DEA agent, and I pass it on to you.

Mr. VON RAAB. Well, she is crazy.

Mr. GUARINI. She speaks well of you, though, Commissioner. [Laughter.]

Thank you very much, and thank you for the good job you are doing.

Chairman GIBBONS. We are going to have a lot of questions to submit for the record. There are some here involved with the Jacksonville port and other places, and we will submit them all for the record.

Mr. VON RAAB. Thank you very much.

Chairman GIBBONS. Thank you.

[The questions for Mr. von Raab and his responses follow:]

Questions for the Record from Congressman J.J. Pickle

DECREASE OF 396 COMMERCIAL OPERATIONS POSITIONS

Question: I notice that you propose to "transfer" 396 positions from commercial operations to inspection and control. I'm not sure that this is such a good idea.

a) Exactly, from where do you plan to take the 396 commercial operations positions?

Answer: At this time, the specific positions have not been identified. Reductions are expected to come from support areas of Tariff and Trade, commercial processing areas of Inspections and Control, and Regulatory Audit. The Customs Service has been able to process a commercial processing workload which for years has been continually increasing in size and complexity without corresponding increases in resources, largely due to the agency's movement towards a "paperless" environment. Obviously, this is not the solution to all problems. However, in this time of tight budgets, we have to assign our resources to the most pressing needs. At this time the specific effect on commercial activities has not been determined.

Automated interfaces with the trade community play an important role in relieving Customs personnel from manual procedures. Expanded Automated Manifest System (AMS) participation by air and sea carriers will allow for savings of Inspection and Control support personnel resources. The electronic transmission of manifest data and automated notification of release of cargo will reduce the clerical workload. The Automated Commercial System (ACS) has also had a great effect on entry units which are responsible for the control of documents and information used in every step of the entry process, from initial presentation through payment of duties. The system has relieved personnel of many routine tasks, offsetting to some degree the dramatic increases in volume. Increased levels of participation in the Automated Broker Interface (ABI) and AMS will help Customs to meet the demands resulting from increases in complexity and volume of imports.

b) We were told last year that you planned to increase availability of import specialists to the trade community and to upgrade and increase staff in your fines, penalties and forfeitures office. How can you do that while cutting 396 positions?

Answer: Between Fiscal Years 1988 and 1989 we have increased import specialist positions by 191 and our fines, penalties and forfeitures office by 100. As noted in the response to the above question, reductions taken will not affect the staffing levels allocated to import specialists and/or fines, penalties and forfeitures.

c) You also told us last year that you planned to improve uniformity of tariff classifications by implementing several programs such as an Automated Customs Information Exchange, a Data Reduction Center, an automated rulings system, a quality assurance program, and by acquiring more research aids for import specialists. How can you do this while cutting 396 positions? Follow up request: I would like for you to supply, for the record, the current status of each of these programs, your best estimate of how much each program will cost in fiscal year 1990, and how much is included in your budget request. I would also like for you to include in your answer, the same information for all the programs you told the Oversight Subcommittee you would implement to improve uniformity in classification.

Answer: Of the 101 additional Import Specialist positions authorized for FY 88, 98 have been filled. Funds for the 90 positions approved by the Commissioner for Fiscal Year 89 have been distributed to the Regions and recruitment efforts are in full swing. As noted above, the reduction of 396 commercial operations positions will not affect our uniformity and tariff classification efforts.

Following is the current status of those programs implemented to improve uniformity in classification:

TRAINING:

Extensive training for Customs personnel and private trade community people was conducted in the Harmonized System prior to the implementation of the new schedules. Training has been conducted for over 600 Customs employees, including supervisory import specialists, Assistant District Directors (Classification and Value), and regional personnel in 20 locations. 40 Customs employees from various districts were trained as Harmonized System instructors. These instructors trained import specialists, inspectors, entry control personnel, liquidators, auditors and mail branch personnel. Customs training of the private sector (brokers and other entry filers) covered approximately 2400 persons across the country. Courses and seminars were conducted for trade organizations including NCBFAA, AAEI, NCITD and the Air Transport Association. Before the Harmonized System became effective, seminars were held with ABI users regarding the Harmonized System. Customs personnel were trained in accessing and obtaining the data from the database.

A total of 9 Basic and 9 Intermediate Import Specialist training classes have been scheduled for FY 1989, and an OJT manual is in development. In addition, approximately 150 import specialists team leaders have been given extra training on specific commodities to enable them to function as deputies to the National Import Specialists and provide binding classification determinations.

1990 COSTS - $200,000

Automated Commercial Systems:

Future training sessions for Import Specialists will include expanded coverage of new initiatives such as AII/EDIFACT, antidumping and countervailing duty entries; and Customs Information Exchange.

The fifth session for Import Specialist Team Leaders was held the week of March 20, 1989. The New York Region, interested in delivering an Import Specialist specific program at home, sent Supervisory Import Specialist observers to this class which hosted 21 Team Leaders from around the country.

1990 COST - $145,000

SEMINARS:

A seminar on electronics (semi-conductors and telecommunications) concluded March 9. The Deputy Commissioner addressed the attendees on opening day.

The first National Import Specialists seminar, luggage, handbags and textiles, was held in Las Vegas in February, 1989. Fifteen major and 12 mini seminars have been funded for FY 1989.

1990 COST - $500,000

EQUIPMENT:

A total of 260 PCs and 34 FAX machines have been delivered to the appropriate locations for the District Binding Rulings Program. All should be on-line by the beginning of April, 1989.

1990 COST - $72,000

RULINGS MODULE:

Approval for continuation of this project was confirmed by the ACS Steering Committee. User requirements are under development.

1990 COST - $50,000

NATIONAL SUMMARY SELECTIVITY:

Tabulation of the Entry Summary Selectivity (ESS) bypass percentage rates by District and Region for January, 1989, has been completed. This is the first complete set of figures under uniform reporting procedures since ESS was implemented. The national bypass rate for January was 49%.

Since entries classified under both the Tariff Schedules and the Harmonized System were processed during this time, no definitive conclusions can be drawn concerning the impact of the Harmonized System on ESS.

1990 COSTS - NONE

DATA REDUCTION:

The Data Reduction test, carried out with the Bureau of the Census, has been abandoned. We anticipate continued growth in Automated Broker Interface due to additional benefits being made available to participants.

For that portion that will not be processed through ABI, we are investigating other options, including an in-house Data Reduction Center Program.

1990 COST - Between $1.4 and $2.5 million

AUTOMATED CIE - STATUS:

A formula has been devised to assign uniform locator "team" numbers to the special units in each region. These 3 character codes will be alpha-numeric to distinguish them from the numbers assigned to the Supervisory Import Specialists and the Import Specialist commodity teams. Input of data into the new Field Import Specialists Biographical and Field Import Specialists Team Number Commodity Assignment files is expected to begin shortly.

National Import Specialist listings with tariff assignments are now available.

1990 COST - NONE

DISTRICT BINDING RULINGS/PRE-ENTRY CLASSIFICATION:

During the first half of March, 1989, a total of 790 ruling requests were processed by the Customs Information Exchange, an average of 65.8 requests per workday. Since its inception, a total of 2,946 requests have been filed under this program.

To date, 50 pre-entry classification projects have been completed with 39 issued as rulings.

1990 COST - $350,000

ACCOUNTABILITY AND QUALITY ASSURANCE:

The first full scale Quality Assurance evaluation of protest processing began in March, 1989. Through Automated Commercial Systems targeting and only one of several planned on-site visits, almost $2 million has already been freed for billing, and potentially troublesome areas have been identified.

1990 COST: 1 GM-14 Branch Chief
3 GM-14 Field Import Specialists
6 GM/GS-13 Import Specialists
1 7/9/11 Program Assistant
Other $200,000

IMPORT ADVISORY CENTERS:

This initiative is on hold pending the results of a legal research center test underway in Washington, D.C.

HELP DESK:

Customs initiated a "Help Desk" to provide program assistant in the Harmonized System, the Rulings Program, CFT, and the Mexican Regime. The Help Desk has been staffed 12 hours a day to provide assistance to the public and to ease implementation.

CONTAINER ENFORCEMENT

Question: How many containers enter the United States in one year?

Answer: In FY 1988, approximately 8.1 million containers arrived in the United States. Three million of these containers arrived via commercial vessels.

Question: How many do you search for illicit drugs?

Answer: Currently, Customs is performing narcotics examinations on 4 percent of all of the containers which arrive in the United States by vessel. Overall though, we examine 6 percent of all the sea containers which arrive from countries which pose a narcotics risk, and 20 percent of all the sea containers which arrive from countries which present a high risk for cocaine smuggling.

Question: How many inspectors did you use to do those searches last year.

Answer: Last year, 26 percent of our inspectional resources were devoted to enforcement related activities, such as performing narcotics examinations of commercial merchandise, and 74 percent of our inspectors were assigned to tasks related to commercial activities and other than narcotics related examinations of merchandise.

The 26 percent of our inspectional workforce that were reported as devoted to enforcement also included those inspectors who performed enforcement related activities while assigned to passenger processing areas.

Included in this 26 percent are the 750 inspectors who are assigned to Contraband Enforcement Teams (CET) throughout the United States. The number one priority of the personnel assigned to these teams is the targeting and examination of high-risk shipments--especially containers and merchandise arriving from high-risk locations. The 750 inspectors on CET represent about 15 percent of our inspectional workforce.

Although, we state that 26 percent are directly involved in enforcement related activities, all of our inspectors are cognizant of the threat that exists with regard to narcotics in commercial merchandise. Inspectors in the field perform many different tasks. Although the primary function of these personnel may not be directly related to strictly narcotics interdiction, all inspectional personnel maintain an awareness of issues related to drug smuggling.

Question: How many pounds of cocaine did you find in those containers?

Answer: In FY 1988, 39,420 lbs. of cocaine was seized in commercial shipments and containerized cargo.

Question: How much did it cost the trade community for you to search those containers?

Answer: We are unable to provide any estimate of this cost. The costs are paid to private parties and are based on the cost of space and labor which varies based on geography and the degree of unionization of the local labor force. Some importers also obtain discount rates based on the volume of business they generate for the facility operator.

Question: Do you have any reason to believe that you are going to find more illicit drugs in containers by hiring 396 new inspectors to "riffle" through containerized cargo?

Answer: With the additional positions that are part of the 1990 budget that will be used to supplement our container effort, we anticipate that we will be able to increase the rate of examination by 50 percent. This means that we will be able to increase our rate of examination of containers from cocaine source/transhipment countries from 20 percent to 30 percent and raise the level of all container exams from 4 percent to 6 percent.

We believe that these levels, combined with our ability to perform quality exams of cargo and conveyances, and our ability to effectively target and identify suspect shipments, we will begin to effectively deter smugglers from continuing to utilize commercial cargo and containers to smuggle large amounts of drugs into the U.S.

Question: What makes you think that Customs knows which containers to search?

Answer: Our past success at seizing large amounts of narcotics in commercial shipments and containerized cargo is the primary indicator that tells us that our profiling techniques are allowing us to concentrate our resources and search the "right" containers. We believe that a successful interdiction effort

includes not only performing effective and thorough examinations of high-risk cargo, as well performing a sufficient number of examinations, but also being able to target those containers which pose the highest risk.

For this reason, we have established and staffed Operational Analysis Staffs (OAS) and Manifest Review Units (MRU's) throughout the country. The primary responsibility of OAS is the maintenance and input of ACS Cargo Selectivity and AMS enforcement criteria. MRU's conduct intelligence work-ups and target shipments for examination during pre-arrival review of cargo manifests. The ability of these entities to identify suspect shipments has been well established.

Question: Do you agree that better targeting techniques are needed.

Answer: I believe that our personnel are very effectively performing the task of targeting high-risk shipments. As stated previously, we believe that our ability to effectively target suspect shipments is critical to our interdiction efforts. For this reason approximately 23 percent of the new 550 staff positions will be personnel performing tasks that relate to profiling shipments. These personnel will be assigned to Manifest Review Units and Operational Analysis Staffs (OAS).

Questions for the Record from Congressman Sam Gibbons

PRECLEARANCE OPERATIONS

Question: Please explain Customs position regarding proposals to expand U.S. Customs preclearance operations to European and/or Asian airports.

Answer: Preclearance was initiated in 1952 as a facilitative measure to alleviate congestion at major U.S. airports by preclearing, in foreign countries, flights considered a low risk for smuggling. Since that time, the picture has changed drastically, particularly in consideration of significant increases in drug trafficking.

Considering this, and many other problems which have evolved as a result of preclearance, it is no longer considered an efficient and effective use of manpower for Customs purposes.

Question: What are the problems and advantages with such an expansion?

Answer:

Advantages: A uniformed Customs presence in a foreign country may act as a deterrent to many would-be small-time drug smugglers. In addition, it would alleviate, to a degree, congestion in International Arrivals areas at some U.S. airports.

Problems: The Anti-Drug bill of 1986 allows Customs officers search, seizure, and arrest authority at preclearance locations, contingent upon approval by the host country. No country has yet agreed to this contingency, leaving our officers with no authority to perform their duties, hence, severely diminishing their effectiveness.

Remoteness of location diminishes Customs control and this fragmentization provides increased potential for internal conspiracies, terrorism, and provides drug traffickers with more opportunities to explore.

Preclearance officers must depend on local law enforcement back-up for searches and arrests, and for security for themselves and their families.

Conflicts concerning citizens rights arise when applying U.S. laws in host or other foreign countries. The lack of immunities for our officers in the performance of their official duties in a foreign country leaves them subject to possible civil, or even criminal actions.

U.S. CUSTOMS SERVICE USER FEES

Question: What is the status of draft legislation to bring customs user fees into compliance with U.S. international obligations under the GATT?

Answer: Legislation to bring customs user fees into compliance with U.S. international obligations under the GATT has been drafted by U.S. Customs and is presently undergoing review at the Department of the Treasury.

The legislation proposes a change from the present ad valorem (.17%) to a transaction-based fee. Fees will offset actual commercial costs as defined by GATT.

ELIMINATION OF SURETIES

Question: What is the current status of Customs' recent attempts to eliminate or reduce sureties on Customs bonds? Is there a current proposal and what is Customs' position? Has a cost benefit analysis been conducted?

Answer: Language in the Customs appropriation for FY 1989 expressly forbids the Customs Service from taking any action to reduce or eliminate the requirement for sureties on Customs bonds. We have scrupulously honored this requirement. However, we have initiated a study to determine the proper risk factors to utilize in setting bond amounts for various Customs transactions. The results of this study should give us a better idea on the question of bond sufficiency.

It is our belief that sureties are not necessary on many transactions involving corporations or individuals with a demonstrated record of payment and with no known financial risk. Sureties may or may not be necessary on transactions with parties with unknown risks. In the immediate future, we are concentrating our efforts on collections from sureties on delinquent cases through our surety sanction program. Under this program, we are curtailing a surety's ability to issue additional Customs bonds if they fail to respond satisfactorily to a show cause letter on delinquent cases.

OUTSIDE CONTRACTS

Question: Please provide a listing and description of all outside contracts that the Customs Service has entered into.

Answer: Following is a complete list of all contracts over $25,000 awarded by the Customs Service during FY 1988 and 1989. The list is divided between those contracts awarded by the Headquarters Contracts and Procurement Division and those awarded by the Customs Service National Logistics Center in Indianapolis, Indiana.

Fiscal Year 1988 Contracts
Awarded by Headquarters

Contract No.	Contractor Name	Supplies/Services
Tc-88-001	Xerox Corporation	Training & Management Services for Automated Commercial Systems
Tc-88-002	DataChem, Inc.	Drug Screenings
Tc-88-003	Horizon Data Corp.	ADP Services - FDS Administrative Support Services
Tc-88-004	The King Edward Hotel	Accommodations for Canadian Conference
Tc-88-005	Hughes Aircraft Company	AN/AAQ-16 (HNVS) Forward Looking InfraRed (FLIR) System
Tc-88-006	Texas Instruments, Inc.	Support and Depot Level Maintenance for FLIRs
Tc-88-007	Gun South, Inc.	Rifles
Tc-88-008	Viatech Systems, Inc.	Automated Commercial System (ACS) Data Entry Contract for Kennedy Airport
Tc-88-009	Stanley Computer Systems, Inc.	ACS Data Entry Services for JFK Airport
Tc-88-010	Ektron Applied Imaging, Inc.	Development and Feasibility Demonstration/ Currency Detection Technology

Contract No.	Contractor Name	Supplies/Services
Tc-88-011	Price Waterhouse	Evaluation of Accounting Systems
Tc-88-013	General Offshore Corp.	Maintenance Contract for Customs-owned Vessels
Tc-88-014	Hannon Associates, Inc.	Security System Maintenance USCS Hqtrs & Front Royal, Va Dog Detector Training Center
Tc-88-015	Columbus Electric Corporation, Inc.	Commercial Electrical Service for Aerostat Site at Deming, NM
Tc-88-016	Raytheon Company	Maintenance of TPS-1, TPS-44 and FPS-8 Ground Radar Surveillance
Tc-88-017	Executive Resources Associates	Conduct Physical Inventory
Tc-88-018	RCA	Secure Telephone Unit
Tc-88-019	Securiguard, Inc.	Security Guard Force
Tc-88-020	Advanced Mgmt, Inc.	
Tc-88-021	Lamarian Systems, Inc.	Technical Assistance & User Support
Tc-88-022	Varian Associates	
Tc-88-023	Armstrong World Industries	Seal, Strip or Card
Tc-88-024	Global Wulfsberg	Radios
Tc-88-025	Trielectron Industries Inc.	Protable Trailer
Tc-88-026	GE Government Services	Aerostat Radar System
Tc-88-027	Cook International	Background Investigations on Customs Employees
Tc-88-028	MVM, Inc.	Background Investigations
Tc-88-029	Special Investigations Inc.	Background Investigations

Contract No.	Contractor Name	Supplies/Services
Tc-88-030	Varicon International	Background Investigations
Tc-88-031	CAT Enterprises, Inc.	Portable Data Terminals
Tc-88-032	Hi-Tech Communication Inc.	Installation of Cable Networks Nationwide
Tc-88-033	SimuFlite	Flight and Maintenance Training
Tc-88-034	Flight Safety International	Flight and Maintenance Training for Aviation Program Personnel
Tc-88-036	Positive Control Systems	Telecommunication Monitor and Recorder
Tc-88-037	Westinghouse Electric Corporation	Support and Repair of F-16 AN/APG-66 Radar on Citation & Customs High Endurance Tracker Aircraft
Tc-88-038	Alliant Devleopment Corporation	Covert Video System
Tc-88-040	Advanced Mgmt, Inc.	ADP Support Services for USCS Office of Data Systems
Tc-88-041	GNJ Corporation	Demonstration of an Automated System for Mail Classification Valuation and Inspection
Tc-88-043	Usatrex International Inc.	Development of Intelligence Analysts Handbook
Tc-88-044	Aronow Powerboats, Inc.	39' USA Catamaran Hulled Interceptors
Tc-88-046	Southwest Research Institute	Courier Services for Computer Equipment
Tc-88-047	Household Data Services	Covert Video & Audio Surveillance System
Tc-88-048	Household Data Services	L-band Microwave Video & Audio Transmitter & Receiver

Contract No.	Contractor Name	Supplies/Services
Tc-88-049	Broadcast Microwave Services Company	Band Frequency Agile Video Receiver
Tc-88-050	Smith & Wesson	9mm Semi-Automatic Pistol
Tc-88-052	North Atlantic Industries	Tempest Approved Laser Printers
Tc-88-053	EBA, Inc.	EBA Aercard Model (Aircraft Mobile Air Conditioning Vehicle)
Tc-88-054	Nagra Magnetic Recorders	Nagra Snst Recorder Kit
Tc-88-055	Grumman Data Systems	CAIS Software & Interbase System
Tc-88-056	FLIR Systems, Inc.	FLIR Systems
Tc-88-057	Glenn Young Boats	Vessel, 32' Lafitte Skiff

Fiscal Year 1989 Contracts
Awarded by Headquarters

Contract No.	Contractor Name	Supplies/Services
Tc-89-001	Jekyll Associates	Training Facilities for Supervisory Seminars
Tc-89-002	Lockheed California	Technical Representative Support for Lockheed
Tc-89-003	Institute for Systems Analysis	Technical Support for C3I Program
Tc-89-004	Sikorsky Aircraft Division-United Technologies Corp.	Technical Representative Support & Repair of 8 Blackhawk Helicopters
Tc-89-005	IBM Corporation	Disc Drives & Magnectic Subsystems for IBM Processors
Tc-89-006	Northrop Worldwide Aircraft Service	National Aircraft Maintenance
Tc-89-007	Luther Grimble	Consultant to Work on Implementation of Drug Interdiction
Tc-89-008	Securiguard, Inc.	Security Guard Force - Dog Detector Training Center
Tc-89-009	Southwest Research Institute	Nuclear Magnetic Resonance Letter Examiner
Tc-89-010	Schwartz Electro-Optics, Inc.	Develop Narrow Beam Cargo Container Range Finder
Tc-89-011	Facilities Mgmt. Co.	Courier Services Between Gelman Building & Headquarters
Tc-89-012	LTV Aerospace & Defense Company	Test & Evaluation of Situation Awareness* Technical Equipment *Interception of Intruders Carrying Drugs which will be landing in US territory
Tc-89-013	ITE, Inc.	Engineering & Technical Services by task orders eg., design of transmitters and

Contract No.	Contractor Name	Supplies/Services
Tc-89-013	ITE, Inc.	receivers, infrared photo surveillance items, ground sensors & metrological services
Tc-89-014	Boyanoski, Malko & Company	Audit Review Services
Tc-89-015	Ideas, Inc.	Engineering & Technical Services by task orders eg., design of transmitters and receivers, infrared photo surveillance items, ground sensors & metrological services
Tc-89-016	Danville-Findorf, Inc.	Completed Construction of C3I (Command, Control, Communications & Intelligence Facility at Miami
Tc-89-017	Coopers & Lybrand	Feasibility Study of Pilot Programs to Privatize Cargo Inspection & Regulatory Audit Services
Tc-89-018	General Electric Co.	Technical Support Services for Repairs, Maintenance for GE's APS-125 radar on Lockheed-produced P-3 AEW aircraft
Tc-89-019	Novacom, Inc.	Engineering & Technical Services by task orders eg., design of transmitters and receivers, infrared photo survaillance items, ground sensors & metrological services
Tc-89-020	ITS Corporation	Data Entry Services
Tc-89-021	Keydata Systems, Inc.	Non-personal Services -contract close-outs
Tc-89-022	Viatech Systems, Inc.	Data Entry Services

Contract No.	Contractor Name	Supplies/Services
Tc-89-023	Nova Express	Initiate an RFP (solicitation) for Courier Services
Tc-89-024	Advanced Mgmt., Inc.	Sytems Engineering Support for Automated Commercial Systems
Tc-89-025	Viatech Systems	Data Entry Services at National Finance Center
Tc-89-026	Memorex/Telex Federal Systems	Disc Drives and Magnetic Subsystems for IBM Processors
Tc-89-027	MBB Helicopter Corp.	3 Twin-engine Mission Support Helicopters

Fiscal Year 1988 Contracts
Awarded by National Logistics Center

Contract No.	Contractor Name	Supplies/Services
Tc-I-88-003	General Order Cartage, Inc.	General Order Cartage for Miami FY 1988
Tc-I-88-004	Neeb-Kearney & Company, Inc.	Cartage
Tc-I-88-005	Jensen's Kennels, Inc.	Kennel Services for FY 1988 - San Diego
Tc-I-88-006	RCF Information Systems, Inc.	Furnish Network Equipment Support
Tc-I-88-007	Bill White, Inc.	Cartage Service
Tc-I-88-008	Safeway Trucking Corp.	Cartage of General Order Merchandise
Tc-I-88-009	Chevalier Transportation, Inc.	Cartage of General Order Merchandise
Tc-I-88-010	Scotsman Manufacturing Corporation	Modular Office Bldg.
Tc-I-88-011	Bill White, Inc.	Cartage Services - Zones 1, 2, 4
Tc-I-88-012	Nelson & Associates, Inc.	Appraisal of Seized Vessels
Tc-I-88-013	Locust Industries, Inc.	Cartage Services
Tc-I-88-014	Bill White, Inc.	BPA - General Merchandise Cartage
Tc-I-88-015	S.A. Milan	Cartage Services
Tc-I-88-016	Brinks, Inc.	Transportation of Currency
Tc-I-88-017	D.D. Jones Warehouse	Cartage of Merchandise for USCS - Norfolk, Va
Tc-I-98-018	Port of Seattle	Seized Vehicle Storage
Tc-I-88-021	Von Schiller Hoehe Kennel	Kenneling Services for Customs-owned Canines

Contract No.	Contractor Name	Supplies/Services
Tc-I-88-022	Dixie Power Systems, Inc.	Port/Engine/Diesels Turbo Charged Engine/ Installation
Tc-I-88-023	Stanley Computer Systems, Inc.	Operational Support Contract
Tc-I-88-024	Auto Vega, Inc.	Minivans
Tc-I-88-025	George Wiley Enterprises	Messenger in-house Mail Service
Tc-I-88-026	R. Christopher Goodwin & Associates	History of Customs/ Bicentennical Display
Tc-I-88-027	Harbor 1 Marina	Upgrade Customs Engine
Tc-I-88-028	Dugazo, Inc.	Security Service
Tc-I-88-029	Outline Visual Communications	Bicentennial Display
Tc-I-88-030	Caswell International Corporation	Mobile Firearms Training Facility
Tc-I-88-031	Howard, Needles, Tammen	A/E Services - National Logistics Center
Tc-I-88-032	Everett I. Brown, Co.	A/E Services - National Logistics Center
Tc-I-88-033	Henry Loheal PC/ Architects	A/E Services - Bldg. 88 JFK Airport
Tc-I-88-034	Arce & Rigan Architects	A/E Services for Renovation of Customshouses
Tc-I-88-035	Space Master Bldgs.	Office Space to Include Storage for ASIG
Tc-I-88-036	Caswell International	Repair, Replace Broken Parts to Bullet Trap
Tc-I-88-037	American Body Armor	Body Armor
Tc-I-88-038	Rollings Protective Services	Personal Budy Guard

Contract No.	Contractor Name	Supplies/Services
Tc-I-88-039	Century-Cellular Network	Funding Forfeiture Fund, Telephone Service
Tc-I-88-040	Auto Vega	6 - 4x4 Vehicles
Tc-I-88-041	Discount Machinery & Equipment, Inc.	Hydraulic Tools
Tc-I-88-042	Big "D" Mobile Homes	3 Mobile Homes
Tc-I-88-043	Auto Vega	Ford Enforcement Vehicles
Tc-I-88-044	Alberic Colon Auto Sales, Inc.	Pontiac Enforcement Vehicles
Tc-I-88-045	Testing Machine, Inc.	Testers
Tc-I-88-046	Losada Auto Truck, Inc.	Chevy Enforcement Vehicles
Tc-I-88-047	Motorola Corporation	Mobile/Base/Station/ Portable Radios

Fiscal Year 1989 Contracts
Awarded by National Logistics Center

Contract No.	Contractor Name	Supplies/Services
Tc-I-89-002	Impact, Inc.	Data Entry Services
Tc-I-89-003	Stanley Computer Systems, Inc.	Word Processing Services
Tc-I-89-004	Pica Systems, Inc.	Data Entry Services
Tc-I-89-005	Tri-Associates, Inc.	Data Entry Services
Tc-I-89-006	Brinks Incorporated	Armored Car Service - Los Angeles
Tc-I-89-007	Nelson & Associates	BPA for Appraisals of Seized Vessels
Tc-I-89-008	Express Typing & Mailing Service	Mailing Services Contract for USCS
Tc-I-89-009	Action Service Corp.	Janitorial Services Contract for San Juan, PR
Tc-I-89-010	R&R Uniforms	Funding for FY 1989 USCS Uniform Program for 6 Months
Tc-I-89-011	R&R Uniforms	FY 1989 Funding for USCS Uniform Program
Tc-I-89-013	Epic Security Corp.	Armored Truck Services
Tc-I-89-014	Brother Hood of Control System, Inc.	Cleaning Services at Bldg. #88, JFK Airport
Tc-I-89-015	Jack Tar Village	Lodging, Meals, Vessel Dockage from 1/1/89 through 3/31/89 - Grand Bahamas
Tc-I-89-016	Falcon Inn	Lodging for Bahamian Defense Force
Tc-I-89-017	Cat Cay Yacht Club, Ltd.	Vessel Dockage - Grand Bahamas
Tc-I-89-018	Cat Cay Yacht Club, Inc.	Lodging - Grand Bahamas

Contract No.	Contractor Name	Supplies/Services
Tc-I-89-019	Pioneer Paving	Repair and Resurface Ramp Area - Air Operations Branch - Albuquerque, NM

IMPROVEMENTS IN PASSENGER PROCESSING

Question: What major initiatives and changes are underway to improve and expedite passenger processing?

Answer: Customs has developed an air passenger processing strategy for the 1990's based on the concept of selectivity. By being more selective in passenger processing through the use of automation and inspectional skills, Customs can improve facilitation and still maintain our significant enforcement role. This strategy is designed to integrate with the operatins of other Federal inspection agencies and to work within the existing airport environments. The first four airports at which the strategy will be implemented are those in Los Angeles, San Francisco, Chicago and Miami. Implementation is scheduled to begin at Los Angeles on May 1, 1989.

In February 1989, the Commissioners of Customs and the Immigration and Naturalization Service (INS) signed a Joint INS/Customs Border System Implementation Plan which involves the development of a single mainframe-based system for all primary lookout queries. The creation of a common lookout system will result in improved border security.

Customs, INS and the Department of State have jointly prepared a Machine Readable Document (MRD) Border Security Program Plan in accordance with requirements of Sectin 4604 of the Anti-Drug Abuse Act of 1988. This plan will result in a more positive identification of individuals applying for entry into the U.S. and in a strengthening of enforcement at U.S. borders.

MAJOR CARGO PROCESSING FACILITATION INITIATIVES

Question: What major initiatives are underway, including automation, to facilitate cargo processing?

Answer: The following major initiatives are currently underway, designed to facilitate cargo processing, while addressing our enforcement needs:

- Electronic Entry Filing (paperless entry), permits the filer to transmit entry data electronically using the Automated Broker Interface (ABI) module of ACS. Entry information filed that does not match cargo selectivity criteria, is released electronically, eliminating the need for paper documents to secure cargo release.

- The Automated Manifest System (AMS) permits the electronic transfer of manifest information to Customs prior to arrival of the merchandise. This speeds cargo processing by allowing Customs to analyze the manifest information, make inspection decisions, and transmit release notification before the shipment has arrived. AMS is operational in the sea cargo environment and will be tested for air carriers this year.

- Automated Invoice Interface (AII) takes the ABI Electronic Entry Filing a step further, to permit the electronic filing of invoice data, in addition to entry data. A pilot of AII is currently underway.

- Electronic Data Interchange For Administration, Commerce and Transport (EDIFACT), is a set of international standards for the electronic exchange of data. EDIFACT provides the cornerstone for AII, allowing users to transmit invoice data.

- Line Release, designed for repetitive, low-risk shipments, is operational at land border ports. Shipments receive expedited processing due to the pre-approval conditions, and Customs ability to release from the primary truck booth.

Other initiatives designed to facilitate cargo processing are: Centralized Examination Stations (CES's), the Master In-Bond Program, and Paired Processing which permits entries to be filed at an inland port of destination for cargo at an arrival port.

PROCEDURES FOR BINDING RULINGS

Question: Describe the procedure for issuance of binding Customs rulings for tariff classification under the new Harmonized Tariff Schedule? What kind of notice and opportunity to be heard will be provided to the importing public?

Answer: Binding rulings requests for prospective importations can now be filed at any Customs Service District Office and must be responded to within 30 calendar days of receipt unless referred to Headquarters. Those rulings referred to Headquarters will be responded to within 120 days of the date of receipt by Customs. A ruling may be delayed for only one of the following reasons: laboratory analysis is required; or, other agency consultation is needed.

The expanded procedures for processing ruling requests are predicated on the submission of a request to any Customs District office and the inclusion of the Deputy National Import Specialists (DNIS) in the procedures designated to respond to these requests. All Districts are establishing internal tracking systems to control requests. Once requests are forwarded to the Customs Information Exchange, the Legal Case Inventory System (LCIS) will be utilized to control requests.

If an importer, or other person to whom a ruling letter is issued, disagrees with the Customs field office having jurisdiction over the transaction to which the ruling relates, the field office will, upon receipt of a written request submitted in accordance with procedures set forth, request advice from Headquarters as to the proper application of the ruling to the transaction.

If an importer disagrees with a binding ruling for on-going transaetions (entries have been filed), he may file a protest with Application for Further Review.

LIMITS ON OVERTIME PAY

Question: What is the status of the limitations on overtime pay and what are the Administration's recommendations for any increase? Please provide all relevant data on overtime for FY 1988, 1989 and 1990.

Answer: Customs Salaries and Expenses appropriation provides for a $25 thousand limitation on the payment of overtime to any Customs employee in FY 1989, with provision for waiver of the cap by the Commissioner or his designee in individual cases to prevent excessive costs or to meet emergency requirements. The $25 thousand cap has been in place for 5 years. Before that, there was a $20 thousand limitation. The Customs Service is not aware of any Administration proposal to increase the limitation.

Overtime payments from the Salaries and Expenses appropriation totalled $34.1 million in FY 1988. Current estimates for these payments are a total of $35.3 million in FY 1989 and a total of $34.6 million in FY 1990.

In addition, as a result of the Consolidated Omnibus Budget Reconciliation Act of 1986, customs collects user fees on certain services. A permanent appropriation was established to make use of these funds for overtime service and preclearance. Overtime payments from the permanent appropriation totalled $86.5 million in FY 1988 and are estimated to total $94.2 million in FY 1989 and $98.9 million in FY 1990.

AUTOMATED BROKER INTERFACE (ABI)

Question: Describe the current operation of the Automated Broker Interface (ABI) and approximately how many entries are now processed through ABI.

Answer: The Automated Broker Interface is a system whereby Customhouse brokers and importers, interfacing directly with Customs computer, enter entry data and receive edits and validations prior to fining paper entries with Customs. There are now over 750 brokers and importers operational on ABI. As of March 24, 1989, 70 percent of total Customs entry volume was processed through ABI; last year at this time, this figure was 45 percent.

QUOTA CHARGES

Question: Please explain Customs recent proposal printed in the Federal Register that all quota charges paid by the buyer be dutiable, regardless of to whom they are paid.

Answer: It is the current position of the Customs Service that quota charges are dutiable as part of the "price actually paid or payable for merchandise when sold for exportation to the United States," if the charges are included as part of the price for the merchandise paid by the buyer to the seller. However, quota charges have not been considered part of "the price actually paid or payable" and therefore, not considered dutiable, when such merchandise has been bought by a buyer from one seller while the quota charge is paid by the same buyer to someone unrelated to the seller.

Customs has invited comments from the public on this proposal. In the Federal Register, dated January 24, 1989 (54 FR 3443) notice was provided establishing February 17, 1989, as the final date upon which submissions would be received. Upon the compilation and consideration of these comments, a final decision will be sent to Treasury.

If this proposed interpretive rule is adopted, all prior Customs rulings which exempted from transaction value quota charges paid as a prerequisite to the exportation of merchandise from foreign countries would be revoked, to the extent that they are inconsistent with this rule.

All comments received in response to the notice are being carefully analyzed. A copy of this notice follows.

which are imported for permanent exhibition under bond and for which duty-free status is claimed is uncertain. It, however, seems to date back to a time when there were no U.S. manufacturers of planetaria and when the facilities housing such equipment, sometimes donated to the public by philanthropists, were in the nature of governmental culture centers. We recently had occasion to review the application of the above-noted criteria in connection with a request for the duty-free entry of a planetarium projector for a university an inquiry which noted that planetaria are usually purchased for the purpose of making presentations rather than serving as an exhibit to be viewed. Also, the institutions importing planetaria and seeking duty-free entry, often educational institutions, appear to be using these planetaria primarily for research, teaching, testing or classroom study which is the reason for the existence of these institutions. It appears that persons attending a demonstration of these articles or presentations utilizing them have come to view the pictures, images, lights, sounds, etc., produced by the articles rather than the articles themselves. While the articles may be viewed during such presentations or demonstrations, it is not the purpose for which the articles were obtained by the institution or the reason the persons have attended such presentations or demonstrations. We have, as previously discussed, noted that the utilization of other articles which have a utilitarian purpose, e.g., a concert organ to be installed in a music hall for presentations or demonstrations, have been considered as being primarily imported for such utilitarian purpose even though the article is subject to viewing. We have concluded that the criteria in T.D. 78-420 should be applied in the same manner to all articles for which duty-free entry is sought under item 862.10, TSUS.

Proposed Action

Customs will apply the criteria presented in T.D. 78-420 in a uniform manner. Planetaria which are to be utilized for the making of presentations or demonstrations will normally be considered as being imported for that purpose. The observation of the planetaria, in connection with these presentations or demonstrations, will be considered as being incidental to the purpose for which they are imported. Such position, while resulting from the application of the criteria in T.D. 78-420 in the same manner they are applied to other articles, could produce a result contrary to the substantive finding in the Treasury Decision. That decision considered extensive use to be incidental to the observation of the technical part of a planetarium film projection system. This change regarding the application of the criteria in T.D. 78-420 could result in the disqualification of planetaria, which are primarily used for the making of presentations or demonstrations, from the duty-free treatment under item 862.10, TSUS, that they have heretofore received.

Comments

Before making a determination of this matter, Customs will consider any written comments timely submitted. comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11, Customs Regulations (19 CFR 103.11(b)), between (9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved October 7, 1988.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 88-26707 Filed 11-17-88; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 152

Dutiability of Quota Charges

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed interpretive rule; solicitation of comments.

SUMMARY: Pursuant to certain bilateral trade agreements, a foreign country may voluntarily restrict the amount of a specified merchandise that it allows to be exported from that country. One of the means of controlling the export of that merchandise is by requiring that an export license, visa, or other quota document be obtained for the exportation. The charge paid to obtain the license, visa or document is known as a quota charge.

In order to properly assess duty on imported merchandise, the value of the merchandise must be determined by Customs. Generally, the customs value of imported merchandise is the transaction value, which is the price actually paid or payable for imported merchandise that is sold for exportation to the U.S. Currently, when Customs determines the value of imported merchandise, it distinguishes between quota charges which are paid by the buyer to the seller of the merchandise and those paid by the buyer to a party urelated to the foreign seller. If paid by the buyer to the seller, Customs considers the quota charges part of the transaction value and accordingly, dutiable. If paid to an unrelated party, Customs has not considered the quota charges dutiable.

This document proposes that all quota charges paid as a prerequisite to the exportation of foreign merchandise to the U.S. will be dutiable, regardless of to whom they are paid. They will be considered part of the transaction value. This change is proposed as a result of Customs recent examination of "quota charge" transactions revealing that payments for quota charges are directly linked to the price actually paid or payable for imported merchandise.

DATE: Comments must be received on or before January 17, 1989.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations Control Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Thomas L. Lobred, Classification and Value Division (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

U.S. Customs officers are required by law to appraise imported merchandise to determine its value. Duty rates are usually assessed on the value of the merchandise. The valuation provisions of the Tariff Act of 1930 are found in section 402 (19 U.S.C. 1401a), as amended by section 201, Trade Agreements Act of 1979 (Pub. L. 96-39). Sections 152.100 *et seq.*, Customs Regulations (19 CFR 152.100 *et seq.*), set forth the regulations governing the appraisement and valuation of merchandise.

Generally, pursuant to 19 U.S.C. 1401a, the customs value of imported merchandise is the transaction value. Pursuant to 19 U.S.C. 1401a(b), transaction value is the price actually paid or payable for imported

merchandise when it is sold for exportation to the U.S., plus certain additions not relevant here. Pursuant to § 152.103, Customs Regulations (19 CFR 152.103), the price actually paid or payable will be considered without regard to its method of derivation. Among other things, transaction value may be the result of discounts, increases, or negotiations. The "price actually paid or payable" is defined in § 152.102(f), Customs Regulations (19 CFR 152.102(f)), as the total payment (whether direct or indirect, and exclusive of any charges, costs, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the U.S.) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

Quotas

A quota is a control set on the amount of certain merchandise that is either allowed to be imported into the U.S. or exported from another country to the U.S. for a certain period of time so that a domestic interest can be protected. Import quotas are generally established by legislation, by international agreements implemented through directives and by proclamations issued under the authority contained in specific legislation. Quotas on the amount of merchandise permitted to be exported from a specific foreign country to the U.S. are usually negotiated under bilateral or multilateral agreements between the U.S. and other countries.

A prime example of a trade agreement leading to a foreign country restricting its exportations is the Arrangement Regarding International Trade in Textiles, known as the Multi-Fiber Arrangement (MFA). Section 204, Agricultural Act of 1956 (7 U.S.C. 1854), authorizes the President to negotiate agreements with other countries to limit their exports of "any agricultural commodity or product manufactured therefrom or textiles or textile products", and to limit U.S. importation of such articles. Under the authority of 7 U.S.C. 1854, the U.S. is a party to the MFA. According to this trade agreement, the governments of textile supplier countries have agreed with the U.S. to control the exportation of textiles and apparel from those countries. If imports of a particular textile product from a participating exporting country are causing a market disruption in the U.S., the U.S. may suggest to the exporting country that a restraint level be set for the particular product by that country. If a bilateral agreement is not worked out within a certain time frame, the U.S. may then take unilateral action by establishing an import quota for that product.

Pursuant to the MFA, bilateral agreements with various exporting countries have been entered into by the U.S., providing for a limitation or voluntary restraint by the foreign country on the amount of exports of specified categories of textile products for specified periods.

A variety of procedures have been instituted by foreign countries to restrain the level of their exports.

Some bilateral agreements provide that specific merchandise from a specific exporting country will not be permitted entry into the U.S. unless accompanied by a visa from the exporting country. Other procedures involve the exporting country requiring the seller to obtain an export license or a quota document before the merchandise can be exported.

Sometimes, the exporting country grants the export licenses, visas, or quota documents without charge on a first come-first serve basis until the voluntary restraint level is met. In other instances, it merely allocates quotas on the basis of past performance (prior year's production), or the exporting country sells the export license, visa, or quota document to various manufacturers, middlemen, and/or importers.

In some situations, the exporting country only allows the producer of the specified merchandise to whom the quota was allocated by issuance of an export license, visa or quota document to export the merchandise. In other cases, the exporting country permits the producer to transfer or resell his quota allocation in total or in part to another producer of the specified merchandise. In yet other cases, the exporting country may not require that the person/company to whom quota is allocated be a producer of that commodity. In this situation, that person/company obviously resells the quota allocation to another party.

Quota Charges

The charge paid to obtain an export license, visa, or any kind of quota document entitling specified merchandise to be exported when a limitation on exports for that commodity has been set is called a "quota charge". A quota charge is, in effect, a charge for the privilege of exporting the specified merchandise to the U.S.

Customs Current Practice

In determining the transaction value of merchandise imported into the U.S. from foreign countries that have export controls on merchandise which result in the payment of a quota charge by a producer, shipper or seller, Customs has held that such charges are dutiable as part of the "price actually paid or payable for merchandise when sold for exportation to the United States," if the charges are included as part of the price for the merchandise paid by the buyer to the seller. However, quota charges have not been considered part of "the price actually paid or payable" and, therefore, not considered dutiable, when such merchandise has been bought by a buyer from one seller while the quota charge is paid by the same buyer to someone unrelated to the seller. See, for example, ORR ruling letter 542169 dated September 18, 1980 (TAA #8) and ORR ruling letter 542150 dated January 8, 1981 (TAA #14). Customs rationale for this view has been that moneys paid for quota charges directly to the seller by the buyer are part of the "price actually paid or payable" for the merchandise, but moneys paid for quota charged by the buyer to an unrelated party to the seller are not paid for the merchandise.

Reasons for Proposed Change

Customs' experience leads it to conclude that payments for quota charges are directly linked to the payments made for imported merchandise. Where quota status is a condition of export, and the importer cannot complete the transaction without obtaining quota, a transaction which does not include quota charges does not reflect the complete price of a sale for export to the United States within the meaning of transaction value under 19 U.S.C. 1401a(b). Therefore, payments for quota charges are part of "the price actually paid or payable when sold for export to the United States" and should be considered part of the transaction value. This conclusion is reflected in the three following situations:

(1) Where the seller obtains quota, and includes the cost of obtaining it in the sales price paid by the buyer, the cost of quota is part of the price actually paid when the merchandise is sold for export.

(2) Where the seller obtains quota on behalf of the buyer, and the buyer makes a separate payment to the quota holder for the cost of quota, the cost of obtaining quota, combined with the cost of purchasing the merchandise, constitute the price when sold for export.

(3) Where the buyer independently obtains its own quota from a party unrelated to either the buyer or the seller, the cost of obtaining quota, combined with the cost of purchasing

the merchandise, constitutes the price actually paid when sold for export.

Proposed Action

In accordance with this reasoning, Customs is proposing that quota charges necessary to export merchandise be included as part of "the price actually paid or payable when sold for exportation to the United States," regardless of which party initially pays the quota charge. Accordingly, it is proposed that all payments of quota charges be considered as part of the transaction value of the merchandise and therefore dutiable.

If this proposed interpretive rule is adopted, all prior Customs rulings which exempted from transaction value quota charges paid as a prerequisite to the exportation of merchandise from foreign countries would be revoked, to the extent that they are inconsistent with this rule. Each of the recipients of those rulings would be notified of Customs reversal of its position pursuant to § 177.9(d), Customs Regulations (19 CFR 177.9(d)).

In making this proposal, Customs has taken note of previous Court cases, such as *Panation Trade Co.* v. *United States*, 54 Cust. Ct. 758, A.R.D. 181 (1965), and *Sternfold* v. *United States*, 12 Cust. Ct. App. 172, T.D. 40085 (1924), which have held certain export taxes or charges paid to a foreign government not to be part of dutiable value in a sale for export. However, these cases were so inherently tied to the concept of export value that they are not relevant to the issue of whether quota charges should be deemed to be dutiable for purposes of transaction value.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2324, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Services. However, personnel from other offices participated in its development.

Michael H. Lane,
Acting Commissioner of Customs.

Approved: September 28, 1988.

Salvatore R. Martoche,
Assistant Secretary of the Treasury.

[FR Doc. 88-26708 Filed 11-17-88; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404, 410, 416, and 422

Federal Old-Age, Survivors, and Disability Insurance Benefits; Black Lung Benefits; Supplemental Security Income for the Aged, Blind, and Disabled; Organization and Procedures; Application of Circuit Court Law

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations withdraw the Notice of Proposed Rulemaking (NPRM) published at 52 FR 2557 on January 23, 1987. That NPRM described a new type of Social Security ruling (Social Security Acquiescence Ruling or "Acquiescence Ruling"), which is available to the public. These proposed regulations reflect a new proposed policy explaining the manner in which we will apply decisions of the United States Courts of Appeals that we determine conflict with Social Security Administration (SSA) policy in adjudicating claims under title II and title XVI of the Social Security Act (the Act) and title IV, Part B of the Federal Mine Safety and Health Act of 1977. The regulation changes will become effective on the date of publication of final regulations.

DATE: To be sure that your comments are considered, we must receive them no later than January 17, 1989.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7452.

SUPPLEMENTARY INFORMATION:

Background

In June 1965, the Social Security Administration first announced a change in the way it would respond to United States Courts of Appeals decisions affecting its programs. This policy provided for the issuance of Social Security Acquiescence Rulings which explain the manner in which we will apply decisions of the United States Courts of Appeals that we determine conflict with SSA policy. As originally announced, these rulings were to be applied only at the administrative law judge hearing level and by the Appeals Council. In January 1986, before we issued any Social Security Acquiescence Rulings, we revised this policy to provide that Acquiescence Rulings would apply at all levels of administrative adjudication (i.e., initial, reconsideration, administrative law judge and Appeals Council) so long as they met certain criteria.

We published a Notice of Proposed Rulemaking (NPRM) at 52 FR 2557 on January 23, 1987, describing the new type of ruling. The NPRM provided that Acquiescence Rulings would apply within the appropriate circuit at all administrative levels of adjudication if:

(1) (a) No prompt relitigation of the policy at issue was to be sought in the relevant circuit; *and*

(b) Application of the ruling at all administrative levels would be workable (i.e., would not result in administrative inefficiency) and feasible *and* would not have an unacceptably adverse effect on Social Security programs or disadvantage individuals already on the Social Security benefits rolls; *or*

(2) A regulatory change to conform national policy to a circuit court ruling was being pursued and there was little doubt of its ultimate publication.

The NPRM provided further that if a ruling did not meet one of these criteria, it would be applied only at the administrative law judge hearing level and by the Appeals Council. However, if we determined that a particular case would be suitable for relitigation, the Acquiescence Ruling would not be binding on the Appeals Council. We received several comments on that NPRM, which we considered in

vessel (as noted supra, the Attorney General, in 29 Op. Att'y Gen. 572, so stated with regard to the predecessor of 46 U.S.C. App. 883)–

In our view, the "whole" to which the phrase, "or for any part of the transportation" refers is simply defined by the words preceding it (i.e., "no merchandise shall be transported by water, or by land and water * * * between points in the United States * * * embraced within the coastwise laws, either directly or via a foreign port"). Thus, what is prohibited by virtue of this clause of the statute is any part of the transportation described previously by the statute, including any part of transportation by water between points in the United States embraced within the coastwise laws when, in the words of the statute following this clause, that part of the transportation is "in any vessel other than a [coastwise-qualified] vessel."

This interpretation does not, as stated by three of the commenters contending that C.S.D. 85–9 should be modified, bring about the "absurd" result that a towing vessel would be subject to 46 U.S.C. App. 883 whenever it engages in a dual-mode movement, even if the carrying part of the movement was performed by a coastwise-qualified vessel and/or the towed vessel was in distress. What is prohibited by virtue of the "or for any part of the transportation" clause is a part of transportation by water or by land and water, when the part of the transportation is "*in* any vessel other than a [coastwise-qualified] vessel." In a dual-mode movement, in the segment of the movement in which the merchandise is towed in the water, the merchandise obviously is not transported *in* a vessel although, as discussed above, that segment of the movement does constitute "transportation."

The intention of 46 U.S.C. App. 883 is "to protect the American shipping industry already engaged in the coastwise trade, to provide work for American shipyards, and to improve and enhance the American Merchant Marine" (*Marine Carriers Corp. v. Fowler*, 429 F. 2d 702, 708 (2d Cir. 1970), *cert. den.*, 400 U.S. 1020 (1971)). Our interpretation of the coastwise laws with regard to the dual-mode movement under consideration, as described above and as applied in C.S.D. 85–9, is consistent with this intention.

Several of the commenters supporting modification of C.S.D. 85–9 limit their arguments to the practical, economic side and state that they concur with the legal and technical rationale offered by the petitioner. This rationale was summarized in the Notice. The only argument in the petition which is not addressed above is that in order for there to be a coastwise transportation within the terms of 46 U.S.C. App. 883, there must be a lading of merchandise onto a vessel at one coastwise point and an unlading of the merchandise from the vessel at another coastwise point. Since, in the dual-mode movement described in the Notice, the jacket is unladen from the carrying vessel at a non-coastwise point, the petitioner contends that there can be no coastwise transportation within the terms of 46 U.S.C. App. 883.

As pointed out above in the discussion of the "or for any part of the transportation" clause of 46 U.S.C. App. 883, § 883 applies to the transportation of merchandise by water, "or by land and water." In transportation by land and by water (e.g., by vessel from a point in the United States to a point in Canada and by land from that point to another point in the United States), there would not be a lading of the merchandise onto the vessel at one coastwise point and an unlading of the merchandise from the vessel at another coastwise point. Thus, it is clear that a lading of merchandise onto a vessel at one coastwise point and an unlading of the merchandise from the vessel at another coastwise point is not always necessary in order for transportation of merchandise to be subject to 46 U.S.C. App. 883.

Several of the commenters opposing modification of C.S.D. 85–9 analogize the dual-mode movement described in the proposed interpretive rule to transportation of merchandise in one vessel from a United States point to a foreign port or to a point on the high seas where the merchandise is landed and then loaded onto another vessel, or transshipped to another vessel, and from which port or point the merchandise is transported in the second vessel to a second United States point. Although this transportation may be somewhat similar to the dual-mode movement described in the proposed interpretive rule, such transportation via a foreign port is actually subject to 46 U.S.C. App. 883 by virtue of a different clause of that statute ("either directly or via a foreign port"). Such transportation involving a transshipment on the high seas concerns statutory interpretive issues which are different from those raised by the dual-mode movement described in the proposed interpretive rule.

Some of the commenters opposing modification of C.S.D. 85–9 contend that permitting the dual-mode movement described in the proposed interpretive rule would create a loophole in the coastwise laws which was not intended by the Congress, one comparing the percentage of carriage and towing in such a movement. This may or may not be so. Our determination as to the applicability of the coastwise laws to the dual-mode movement described in the proposed interpretive rule must, however, be based on a clear reading and thorough consideration of the laws involved, not a mechanical weighing of the respective proportions of the carrying and towing segments in a dual-mode movement or an evaluation of whether a movement is intended to evade the coastwise laws. We believe that our interpretation reflects just such a reading and consideration of the coastwise laws.

Action

After careful analysis of the comments and following further review of the matter, we find that the ruling in C.S.D. 85–9 should stand. That ruling modified C.S.D. 80–98 and similar rulings so that the movement of a vessel on another vessel from a coastwise point to a foreign point or a point on the high seas where the vessel is removed from the carrying vessel and then towed onward to another coastwise point is considered coastwise trade. Accordingly, the carrying vessel in this kind of movement must be coastwise-qualified.

Authority

This document is issued under the authority of 19 U.S.C. 66, 1624; 46 U.S.C. App. 13, 316(a), 319, 802, 808, 883, 883–1, and 46 U.S.C. 12108.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Michael H. Lane,
Acting Commissioner of Customs.

Approved: December 5, 1988.

John P. Simpson,
Acting Assistant Secretary of the Treasury.

[FR Doc. 89-1451 Filed 1-23-89; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 152

Dutiability of Quota Charges; Solicitation of Comments

AGENCY: U.S. Customs Service, Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period of time within which interested members of the public may submit

comments concerning the dutiability of quota charges. Customs proposed, in a notice published in the Federal Register (53 FR 46626) on November 18, 1988, that all quota charges paid as a prerequisite to the exportation of foreign merchandise to the United States will be dutiable, regardless of to whom they are paid. Comments were invited from the public on this proposal. Comments were to be received on or before January 17, 1989. A request has been received to extend the period of time for comments an additional 30 days. In view of the complexity of the issues involved, the request is being granted.

DATE: Comments will now be accepted if received on or before February 17, 1989.

ADDRESS: Comments should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: Thomas L. Lobred, Commercial Rulings Division, (202–566–2938).

Dated: January 13, 1989.

B. Ernelius,

Acting Assistant Commissioner, Commercial Operations.

[FR Doc. 89–1447 Filed 1–23–89; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Enrofloxacin Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Mobay Corp., Animal Health Division. The NADA provides for use of Baytril® (enrofloxacin) Tablets for the treatment of susceptible bacterial infections in dogs.

EFFECTIVE DATE: January 24, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Mobay Corp., Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, filed NADA 140–441 providing for use of Baytril® (enrofloxacin) Tablets. The product is used to treat bacterial dermal, respiratory, and urinary tract infections of dogs. The NADA is approved and the regulations are amended by adding new 21 CFR 520.812 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an abbreviated environmental assessment, may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Part 520 is amended by adding a new § 520.812 to read as follows:

§ 520.812 Enrofloxacin tablets.

(a) *Specifications.* Each tablet contains either 5.7, 22.7, or 68.0 milligrams of enrofloxacin.

(b) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 2.5 mg/kg (1.13 mg/lb) of body weight twice daily.

(2) *Indications for use.* Dogs for treatment of the following bacterial infections: dermal infections (wounds and abscesses) caused by susceptible strains of *Escherichia coli, Klebsiella pneumoniae, Proteus mirabilis,* and *Staphylococcus aureus;* respiratory infections (pneumonia, tonsilitis, rhinitis) caused by susceptible strains of *Escherichia coli* and *Staphylococcus aureus;* and urinary cystitis caused by susceptible strains of *Escherichia coli, Proteus mirabilis,* and *Staphylococcus aureus.*

(3) *Limitations.* Treatment should be continued for 2 to 3 days beyond cessation of clinical symptoms. Do not use for more than 10 days. Safe use in breeding female dogs has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 12, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–1444 Filed 1–23–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207 and 255

[Docket No. R–89–0853; FR–2511]

Revisions Relating to the Full Insurance and Coinsurance of Existing Cooperatives

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule revises certain overly restrictive provisions contained in HUD regulations authorizing FHA insurance or coinsurance of existing cooperative housing projects. The provisions relate to cooperative mortgagor eligibility, secondary financing limitations and the maximum refinancing mortgage allowable. The purpose of the rule is to remove unnecessarily restrictive program participation requirements.

EFFECTIVE DATE: March 6, 1989.

EXAMINATION OF TEXTILES AND APPAREL

Question: Describe in detail Customs practices and procedures for examining imports of textiles and apparel.

Answer: Textiles and apparel are not treated any differently than other commodities in the examination process. The only minor difference is that an entry for textile merchandise subject to quota/visa restraints must be reviewed by an import specialist prior to release (where import specialists are available). Based on information found in the entry package an import specialist/customs officer may designate merchandise for examination because he suspects an admissibility problem, i.e. wrong category number.

Otherwise, examination procedures are the same as other commodities. Merchandise is designated for examination based on criteria shown in the selectivity module of Automatic Commercial Systems.

For the actual examination of the merchandise instructions have been issued to the field detailing the seizure policy for overweight textile shipments. The field has also been given instructions on how to correctly determine the weight of a textile shipment.

If upon examination there is a question of admissibility, i.e. wrong category number, not legally marked, quantity on visa less than quantity shipped etc., then the goods will not be released until the problem has been corrected (new visa or visa waiver/properly marking merchandise).

JACKSONVILLE STAFFING

Question: Container traffic at the Port of Jacksonville, Florida has increased significantly over the past two years. Given this increase, Customs apparently has called for a substantial increase in the number of Contraband Enforcement Team (CET) inspections, focusing on container imports from South America. Are the number of inspectors and other personnel designated to Jacksonville adequate enough to deal with the increased workload at the devanning stations?

Answer: Recent seizure statistics indicate that there has been an increase in the use of containers and containerized cargo to smuggle narcotics into the United States. In order to address this threat, Customs has increased its efforts to identify and examine cargo and containers which pose a high risk. However, this effort to identify and examine suspect containers is not limited to the Jacksonville area-it is a national initiative.

The port of Jacksonville receives approximately 7,000 containers a month. About 80 percent of these container arrivals are from narcotics source/transit countries. Local district managers are aware of this situation, and are taking the appropriate actions to ensure that we are able to address the threat, and at the same time, ensure that cargo is processed in an expeditious manner.

The current inspectional staffing at Jacksonville consists of 22 positions, which includes 16 inspectors and one Canine Enforcement Officer. Because of the large volume of high-risk cargo, two new inspector positions are being added to Jacksonville, and plans are underway to utilize 14 Guardsmen from the Florida National Guard to support our container examination initiative in Jacksonville. If the FY 1990 Budget is approved, the Tampa district, which includes the Port of Jacksonville, will receive an additional five to nine CET positions.

In addition, Customs managers have also sought to minimize cargo delays by collocating and prioritizing the CET and devanning operations. Weekly meetings are conducted with the Port Authority representatives in Jacksonville to ensure that Customs is aware of their concerns.

Question: Is it reasonable to target four to six additional inspector positions to Jacksonville? Do you have any plans within the FY 1989 "Cycle of Enhancements" to designate additional inspectors to Jacksonville?

Answer: We do not have any plans within the FY 1989 "Cycle of Enhancements" to designate additional inspectors positions to specifically support our container initiative at Jacksonville or other locations.

As stated in a previous response, because of the large volume of high risk containerized cargo which enters the United States through Jacksonville, two new inspector positions are being added to that location, and plans are underway to utilize 14 Guardsman from the Florida National guard to support our container examination initiative in Jacksonville. We are confident that these actions will enable us to effectively meet the assessed threat in the Jacksonville area.

Question: The President's revised budget for FY 1990 contains $28 million in funding requests for a new cargo container initiative which will fund some 550 new positions. Can you alleviate an inspector staffing shortage at Jacksonville ?

Answer: In FY 1990, the Office of Inspection and Control will use additional positions to augment our container effort. We will place these personnel in those locations which we have identified as being the highest risk for the large load interdiction of cocaine. The positions will be used to support our container enforcment efforts in terms of targeting and performing container examinations.

If the FY 1990 budget is approved , the Tampa District, which includes Jacksonville, will receive five to nine additional Contraband Enforcement Team (CET) positions. The number one priority of the personnel assigned to these teams is the targeting and examination of high-risk shipments.

Question: The Port Authority of Jacksonville has apprised the Subcommittee that Customs inspectors on location at the seaport devanning stations are frequently called away without notice in order to assist with activities at the U.S. Naval base in Jacksonville. When this occurs, the CET inspections are "on hold" until the Customs inspectors return to location. The consequence is excessive delays in the movement of containerized cargo through the port and additional costs which must be absorbed by the importer and/or the Port Authority. Does Customs have any plans to alleviate this situation?

Answer: Local Customs management in Jacksonville is aware that the Jacksonville Naval Station competes with the rest of the port for our limited inspectional resources. In order to alleviate this issue, Customs is working with the Jacksonville Naval Station on designating Military Customs Inspectors. Once designated, these inspectors will perform much of the work that was previously accomplished by Customs inspectors.

Customs managers have also sought to minimize cargo delays by collocating and prioritizing the CET and devanning operations. Weekly meetings are conducted with the Port Authority representatives in Jacksonville to ensure that Customs is aware of their concerns.

In addition, in order to further reduce stripping costs and cargo delays, Customs officials in Jacksonville are currently soliciting bids to establish and operate a Centralized Examination Station (CES) within the port.

INFORMAL ENTRY

Question: Has the Customs Service considered raising the informal level?

Answer: Yes. In order to ensure uniformity and provide equal treatment to all industries, Customs has forwarded a Request for a Rulemaking to Treasury. This Rulemaking will standardize the informal entry limit ($1,250) regardless of the mode of transport upon which the merchandise arrives in the U.S. The $1,250, at present, is only applicable to merchandise brought into the U.S. by express consignment operators.

CARGO SELECTIVITY

Question: In your budget proposal you claim that: "[t]he [ACS cargo] selectivity system has reduced the number of [cargo] examinations, but more discrepancies have been detected,..." What data do you have to support this claim?

Answer: Narcotic and other dangerous drug seizures by Customs Inspectors have increased 29 percent from 1986 to 1987. Although the number of inspections per inspector has been reduced by 15.5 percent (allowing for more examinations), total seizures by inspectors have increased 61 percent in the same time period.

These data have been abstracted from Customs Performance Report, FY 1987.

	FY 1986/1987
Customs Formal Entries (Table A-1)	+ 10.8%
Inspections per inspector FTE (Table F-3)	- 15.5%
Total Seizures by Inspectors (Table F-9)	+ 61.2%
Total Narcotic/Drug Seizures by Inspectors (Table F-7)	+ 29.0%

Prior to the Automated Commercial System (ACS), the statistics collected on our commercial operations were recorded manually, transferred to port and district records, and submitted to headquarters for the preparation of national reports. Because this process was extremely labor intensive, the type and level of data captured was fairly limited. We did not maintain statistics on the actual number of examinations or numbers of discre-pancies found. We do however, have other data that leads us to the conclusion that we have reduced the number of cargo examinations, while at the same time increased the number of discrepancies found.

In October 30, 1987, the Department of the Treasury conducted a study for OMB entitled: "The Automated Commercial System, Impact on Customs Commercial Operations" which outlined significant changes in the business of importing to the U.S., including the impact of special trade programs (voluntary restraints, trade embargoes, reduced or duty free status, and demands placed on Customs to enforce other agency requirements). Equally significant is growth in the sheer volume of imports. Customs Performance Reports for FY 1981 and FY 1986 show the total number of formal entries growing from 4,641,000 to 7,320,000 - a sixty five percent increase. On the other hand, based on figures from

the Customs Monthly Inspectional Staffing Report, the workforce respon-sible for performing physical examinations, Customs inspectional staff, grew from a total of 4,473 positions in 1981 to 4,780 positions in 1986, an increase of less than seven percent. With growing workload not only in commercial processing, but air, land and seaport passenger processing, compounded by an increase in narcotics interdiction demands, Customs could not maintain the same numbers of cargo examinations.

From 1842 to the early 1980s, Customs policy was to examine a portion of every importer's shipment. In 1978, GAO examined Customs inspection process and reported that Customs cargo inspection did not ensure compliance with the laws and regulations governing imports because the inspections were usually cursory. Based on the GAO recommendation, in 1981, the Department of Treasury ammended the Customs regulation relating to the examination of imported merchandise. The ammended regulation allowed Customs to establish systems (ACS) whereby only high-risk shipments are physically examined by inspectors.

Since any previous tracking of commercial dis-crepancies was strictly limited to actual seizure or penalty actions, it is not possible to provide sta-tistics on discrepancies discovered. Current policies include administrative proceedings, in addition to seizure and outright penalty actions for handling significant discrepancies. In ACS we note discre-pancies as part of the entry examination findings. These discrepancies can range from a minor discre-pancy in quantity, or a partial shipment not properly marked, to an outright failure to manifest or a fraud case. We believe however, because our inspectors have been provided the necessary tool (ACS Cargo Selectivity), to keep abreast of the ever-changing, volatile import industry, they are better equipped with up-to-the-minute, critical information that assists them in making well-informed decisions and in discovering discrepancies that may have otherwise gone undetected.

SECTION 1595a(c) SEIZURES

Question: What is Customs policy regarding the use of Section 1595a(c) for seizures of commercial merchandise?

Answer: Despite certain assertions that section 1595a(c) may only be used in connection with narcotics violations, it remains Customs position that the statute authorizes seizures in cases involving commercial violations. The legislative history regarding section 1595a(c) expressly recognizes use of the statute in connection with commercial violations. With regard to the question of the applications of section 1595a(c) in circumstances also involving a violation of 19 U.S.C. 1592, Congress expressly stated in the legislative history (H.R. REP. NO. 794, 99th Congress, 2d Session (1986)) the following:

"It is the Committee's intention, however, that the provision would allow seizure and forfeiture in those cases where merchandise has been imported contrary to laws other than section 592 even if the importation is also a violation of section 592."

Nevertheless, to ensure that seizure authority under section 1595a(c) is exercised responsibly and effectively, Customs continues to follow the guidelines set forth in customs Directive 4400-07, Guidelines for Seizures and Penalties under 19 U.S.C. 1595a(c), issued on January 26, 1988. (copy attached) These guidelines generally limit the use of section 1595a(c) to violations involving restricted or prohibited merchandise. More specifically these guidelines were revised to provide for:

-- An increase in overage criteria from five to ten percent for seizures in textile and steel overage cases.

-- No assessment of penalties in addition to seizure under section 1595a(c), unless aggravating factors are present.

-- And, a "Clean Slate," meaning seizures made prior to the issuance of this Directive would not be counted against seizures made subsequent to the Directive.

It should also be noted that the guidelines provide for remission of section 1595a(c) forfeitures.

POLICIES & PROCEDURES MANUAL

CUSTOMS DIRECTIVE

NUMBER: 4400-07

ISSUE DATE: JANUARY 26, 1988

SUBJECT: Guidelines for Seizures and Penalties under 19 U.S.C. 1592 and 19 U.S.C. 1595a(b)(

REFERENCES: Title 19, United States Code, Section 1592
Title 19, United States Code, Section 1595a
Title 19, Code of Federal Regulations, 171, App. B
Fines, Penalties and Forfeitures Handbook, Chapters FRD and CON

1. PURPOSE

This Directive establishes Revised Guidelines For Institution of Seizures And Penalties Under Section 1595a When Section 1592, Also May Be Applicable and For Remission of Section 1595a(c) Forfeitures.

2. BACKGROUND

As a result of the enactment of the Anti-Drug Abuse Act of 1986, on October 27, 1986, a new subsection (c) was added to title 19, United States Code, section 1595a, which now provides in pertinent part as follows:

"(a) ...every vessel, vehicle, animal, aircraft, or other thing used in, to aid in, or to facilitate, by obtaining information or in any other way, the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the United States contrary to law, ..., may be seized and forfeited together with its tackle, apparel, furniture, harness, or equipment

"(b) Every person who directs, assists financially or otherwise, or is in any way concerned in any unlawful activity mentioned in the preceding subsection shall be liable to a penalty equal to the value of the article or articles introduced or attempted to be introduced."

"(c) Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of section 592) may be seized and forfeited."

Customs Form 190 (Revised)

Title 19, United States Code, section 1592(c)(5), permits seizure of imported merchandise when there is reasonable cause to believe that a violation of that section has been committed and when there is reasonable cause to believe that:

1. The violator is insolvent;

2. The violator is beyond the jurisdiction of the United States;

3. Seizure is essential to protect the revenue; OR

4. Seizure will prevent the introduction of prohibited or restricted merchandise into the Customs territory of the United States.

As a result of the decision by the Court of International Trade in United States v. One Red Lamborghini and One Black Lamborghini, C.I.T. No. 85-010-01393, Customs Headquarters has taken the position that summary forfeitures are not permissible for goods seized under section 1592. Thus, even if goods are absolutely prohibited in the condition as imported, forfeiture under section 1592, is not permissible prior to a judgment on the penalty action.

Congress, however, specifically noted the following purpose for the new subsection (c) to section 1595a:

> "This provision is intended to fill a gap which was caused when former section 593 was moved in 1948 to the criminal code as 18 U.S.C. 545. In addition, although section 592 permits the seizure of prohibited goods, this is in some cases unsatisfactory. While it is true that most laws which restrict or prohibit merchandise provide for forfeiture, some such as the motor vehicle laws and coffee laws merely deem the goods to be a 'prohibited importation' but do not provide for a separate forfeiture."

H.R. REP. NO. 794, 99TH Cong., 2d Sess. (1986).

Thus, as a result of the new seizure provision under section 1595a(c), any merchandise introduced or attempted to be introduced into the United States contrary to law may be seized and forfeited without judgment on a penalty claim. On the other hand, the number of situations where merchandise may be subject to seizures and penalties under both section 1595a, and section 1592, have increased.

3. ACTION

To assist in the resolution of cases arising under circumstances where both section 1592 and 1595a appear to be applicable, the following Guidelines have been adopted:

A. Seizure and forfeiture under Section 1595a(c).

Merchandise introduced or attempted to be introduced into the United States contrary to any law, which either imposes or enforces a restriction or prohibition applicable to such merchandise, generally shall be seized and forfeited under section 1595a(c).

Seizure shall not be made under section 1595a(c), when the violation solely or primarily affects the applicable duty rate or the appraised value of the imported merchandise.

When a violation of section 1592, is alleged, seizure under section 1592, shall be made only if the violator is insolvent, absent from the United States, or seizure is necessary to protect the revenue.

Example One: Seizure and forfeiture Under Section 1595a(c)

(1) Acme Company imported a shipment of men's knit shirts from Taiwan under a false description of the fabric content as "polyester" and under a textile quota visa applicable to man-made fiber shirts (638 category). Customs examination revealed that the shirts were made of cotton, which required a cotton quota visa (238 category). Seizure of the of men's knit shirts may be made under section 1595a(c), since they were imported contrary to the restrictions imposed pursuant to the bilateral textile agreement between the United States and Taiwan.

(2) Michael attempted to enter two Mercedes Benz automobiles not covered by EPA certificates of conformity, into the United States by means of the knowingly false statement that the vehicles were intended for personal use of two Austrian citizens. In truth, however, the vehicles were intended for sale by Michael, and thus, not exempted from EPA emission standards. Since the vehicles were imported contrary to EPA laws (40 CFR Part 85), both vehicles may be seized under section 1595a(c).

Example Two: No Seizure Under Section 1595a(c)

Sea-Trader imported crabmeat from Canada having a foreign value of $10,000, (properly dutiable under Item 114.15 (TSUS), at the rate of 7.5% ad valorem) under the false invoice description that the merchandise consisted of lobster meat (duty-free under Item 114.45 (TSUS)). There is no restriction applicable to the importation of crab meat, but the violation resulted in a potential loss of revenue of $750.

[Seizure under section 1592 would be proper only on the basis of insolvency, absence from the jurisdiction or necessity to protect the revenue.]

B. Seizures Under Section 1595a(c) In Cases Involving Textile Or Steel Overages

The entire shipment of textile goods covered by an export quota visa or of steel or steel products covered by a Voluntary Restraint Arrangement (VRA) export certificate, containing a quantity or weight in excess of that amount indicated on the accompanying visa or export certificate, may be seized under section 1595a(c), under the following circumstances:

(1) The overage (i.e., excess weight or quantity) is ten (10) percent or more; OR

(2) The overage is between five (5) and ten (10) percent, and the current shipment has been introduced by an importer who has two or more prior violations involving textile or steel overages (whichever is applicable under the circumstances) from the same foreign supplier within the last one-year period;

OR

(3) The overage is between zero (0) and five (5) percent, and the current shipment has been introduced by an importer who has three or more prior violations involving textile or steel overages (whichever is applicable under

the circumstances) from the same foreign supplier within the last one-year period;

OR

(4) An overage of any percentage, where there is evidence that such violation was intentionally committed by the importer. IN THESE CASES, WHEN THE OVERAGE IS BETWEEN ZERO (0) AND TEN (10) PERCENT, SEIZURE REQUIRES THE PRIOR APPROVAL OF THE CHIEF, PENALTIES BRANCH.

[All prior instructions pertaining to seizures in textile or steel overages cases are hereby superseded and amended accordingly.]

C. Penalties

When a seizure has been made under section 1595a(c), a penalty shall not be assessed under either section 1595a(b), section 1592, or any other applicable penalty provision, unless there are aggravating circumstances relating to the violation.

In cases where a section 1595a(c) seizure could have been made under the policy of this Directive, but the Area/District Director has exercised discretion not to seize, a penalty may be assessed under either section 1595a(b), or section 1592.

Penalties shall not be assessed under section 1595a(b), however, in cases where the merchandise would not have been seized, even if available for seizure, under the policy set forth in this Directive.

D. Guidelines

Revised guidelines for remission of section 1595a(c) forfeitures are attached hereto as Appendix A.

The guidelines for remission of section 1595a(c) forfeitures also shall be used in considering petitions for mitigation of section 1595a(b) penalties.

4. EFFECT OF THIS ISSUANCE

This Directive abolishes and supersedes Customs Directive 4400-03, issued on March 27, 1987, and amends "Guidelines For Remission of Section 1595a(c) Forfeitures", issued on June 4, 1987 (ENF 4-02.2 CO:R:E:C 653977 SLG).

Section 1595a(c) seizures made prior to the date of this Directive shall not be counted against seizures made on or after the date of this issuance. Shipments involving textile and steel overages introduced prior to the date of this Directive also shall not be counted against textile and steel shipments introduced on or after the date of this issuance.

If an initial decision has not been made prior to the date of this Directive, petitions for remission of forfeitures of merchandise seized under section 1595a(c), shall be processed under the remission guidelines in this issuance.

5. RESPONSIBILITIES

Area and District Directors will be responsible for ensuring that the provisions of this Directive are implemented uniformly within their local jurisdictions.

Guidance concerning the application of this Directive may be requested from the Chief, Penalties Branch, Headquarters (FTS 566-8317) or the appropriate Regional Counsel.

The statements made herein are not intended to create or confer any rights, privileges or benefits for any private person, but are intended merely for internal guidance.

William von Raab

Commissioner of Customs

Attachment

Distribution
H-02 Assistant Commissioners
H-03 Chief Counsel
R-01 Regional Commissioners
R-02 Regional Counsels
R-03 Assistant Regional Commissioners (ENF)
R-04 Assistant Regional Commissioners (OPS)
F-01 District/Area Directors
F-10 District FP&F Officers
G-01 All Special Agents in Charge (ENF)

CD 4400-07

APPENDIX A

REVISED GUIDELINES FOR REMISSION OF SECTION 1595a(c) FORFEITURES

A. SCOPE

1. These guidelines are applicable only upon the filing of a petition pursuant to section 1618, for remission of the forfeiture.

2. In addition to normal conditions for remissions of forfeitures such as, payment of storage charges and execution of a hold harmless agreement and release, remissions under these guidelines also shall be conditioned upon (a) the removal or correction of any restriction pertaining to the seized merchandise, or (b) exportation of the merchandise under Customs supervision if such restriction either is not or cannot be corrected.

3. The dispositions set forth in these guidelines may be applied in determining the criteria for early release of merchandise seized under section 1595a(c). The Area/District Director may authorize early release for less than the domestic value of the merchandise, where such does not exceed $100,000. If the domestic value of the seized merchandise exceeds $100,000, such a request for early release must be approved by the Chief, Penalties Branch.

4. Extraordinary factors not specified in these guidelines may justify deviation from the specific dispositions set forth in these guidelines.

B. DISPOSITIONS

1. First Offense, Mitigating, but no Aggravating Factors, Remission upon payment of:

10--30% of the dutiable value of the seized goods.

2. First Offense, but Aggravating Factor(s), Or Second Offense, no aggravating factors, Remission upon payment of:

30--50% of the dutiable value of the seized goods.

3. Second offense, plus Aggravating Factor(s), or Third or Subsequent Offense, Remission upon payment of:

50--80% of the dutiable value of the seized goods.

4. **Textile and Steel Overages cases,** Remission upon payment of:

10--80% of the dutiable value of the seized goods, pursuant to the "Special Dispositions" table in Attachment A.

5. **Criminal Conviction of owner of seized goods in connection with transaction leading to seizure,** NO REMISSION, Seek forfeiture of seized goods.

6. **Mistake of Fact or Clerical Error:** Forfeitures under section 1595a(c), **shall be remitted in full,** when it is established that the violation of law, resulted solely from either a clerical error or mistake of fact, as defined under 19 CFR 162.71(c)(d).

7. **Other Extenuating Circumstances:** Forfeitures under section 1595a(c), **may be remitted in full,** when the deciding official (D.D. or Headquarters) determines that such action is justified by the equities relating to the seizure.

For example, if there is evidence that the owner of the goods under seizure did not participate in any way in the violation and exercised reasonable care to ensure compliance with Customs laws or if the only participation by the owner was the filing of the entry documentation and there is evidence that he attempted to confirm the veracity of the material information prior to filing documents with Customs, the seizure may be remitted in full. [In any such case, however, a personal penalty (e.g. under 19 U.S.C. 1592 or 1595a(b)) may be assessed against the culpable party(ies).]

C. DEFINITIONS

1. **Second, Third or Subsequent Offenses:**

The shipment currently under seizure will be considered a "second, third or subsequent offense", whichever is applicable, if it has been imported by or on behalf of a person whose goods have been seized under section 1595a(c), within a one-year period, and forfeiture thereunder was not remitted in full.

2. **Mitigating Factors:**

The following factors may be considered for remission of forfeitures in accordance with the dispositions under these guidelines, when established by the Petitioner.

(a) Prior Good Record of the Violator.

(b) Inexperience in Importing.

(c) Cooperation with Customs officers in ascertaining facts establishing the violation.

3. **Aggravating Factors:**

When established by the record, the following factors may be considered as off-setting any applicable mitigating factors or as justifying denial of relief under these guidelines.

(a) Criminal Violation relating to the subject transaction.

(b) Repetitive Violations of the same import restriction involved in the seizure (including cases in which no seizure was made under section 1595a(c)).

(c) Evidence that the Importation Contrary to Law was intentional.

Attachment A

SPECIAL DISPOSITIONS FOR TEXTILE AND STEEL OVERAGE CASES

% Excess Weight to Visa/Export Certificate Weight - Current Shipment	First Offense	Second, Third and Subsequent Offenses	
		2 - 5 Overweight Seizures Within Past one-year	Over 5 Overweight Seizures Within Past one-year
0 - 15 % overage	10 - 20 % dutiable value	15 - 30 % dutiable value	25 - 50 % dutiable value
15 - 25 % overage	15 - 30 % dutiable value	25 - 45 % dutiable value	40 - 65 % dutiable value
25 % and up overage	25 - 45 % dutiable value	40 - 65 % dutiable value	60 - 80 % dutiable value

MARINE INTERDICTION PROGRAM SEIZURE STATISTICS

Question: Provide any seizure statistics or audit data recently conducted regarding the marine interdiction program.

Answer: The following are the Marine Interdiction Program seizure and arrest statistics for Fiscal Years 1987 and 1988:

	FY 1987	FY 1988
MARIJUANA	963,638 LB	790,921 LB
COCAINE	27,519 LB	46,020 LB
HEROIN	37 LB	92 LB
HASHISH	630 LB	88,781 LB *
ARRESTS	638	1034
VESSELS	269	329
VEHICLES	UNKNOWN **	353
AIRCRAFT	UNKNOWN **	22
WEAPONS	UNKNOWN **	180
CURRENCY	UNKNOWN **	$3,449,608

* Dramatic increase due to two large seizures
** Not separately tracked in FY 1987

AIR PROGRAM SEIZURE STATISTICS

Question: Provide any seizure statistics or audit data recently conducted regarding the Air Program.

Answer: The seizure statistics for the Air Program for FY-86 through FY-88 are as follows:

Enforcement Results	FY-86	FY-87	FY-88
SEIZURES			
Cocaine (LBS)	16,145	23,240	56,545
Marijuana (LBS)	58,041	170,943	137,490
Aircraft	41	66	72
Vehicles	49	74	212
Vessels	8	27	23
ARRESTS	167	250	473

AEROSTATS FOR THE GULF COAST

Question: Last year, hearings before the House Armed Services Committee documented a radar gap in the Gulf Coast border from Brownsville, Texas to northern Florida that is extremely vulnerable to drug traffickers entering the U.S. In response to this trafficking threat, I understand the Customs Service plans to deploy aerostat surveillance systems along the Southern border to provide continuous radar monitoring of the region.

The Customs Service last year awarded a contract for the procurement of 9 aerostats to be deployed along the Gulf Coast border although funding was only available for 4 of the 9 systems. How does the Customs Service expect to complete funding for the Southern border aerostats?

Answer: In response to your question, the Customs Service awarded a contract for the procurement of four aerostat systems with options to procure up to five additional systems (subject to funding availability). Three of the four contracted systems were funded by DOD for sites selected at Marfa, Eagle Pass, and Rio Grande City, TX. The fourth system under this contract was funded under the provisions of a grant to the Commonwealth of Puerto Rico by Public Law 100-202. This system will be deployed at Lajas, and will be operated by the Government of Puerto Rico. These procurements are in addition to the systems at Deming, NM, and Ft. Huachuca and Yuma, AZ, which were previously funded and procured under a separate contract. The Ft. Huachuca, AZ, system became operational 24-hours-a-day on August 2, 1988; the Deming, NM, system became operational in late March, 1989; and the Yuma, AZ, site is under construction.

With eventual denial of prime air smuggling routes in the Caribbean and along the U.S-Mexican Border, we can expect the diversion of major air smuggling routes to the Gulf Coast. In anticipation of such events, the Aerostat Joint Program Office has identified potential deployment sites along the Gulf Coast at Matagorda, TX; Morgan City, LA; Alabama Port, AL; Horseshoe Beach, FL; and Venice, FL. Any estimated schedule for these proposed systems will be predicated upon the date funding becomes available and existing contract options can be executed.

AEROSTAT GAPS ALONG THE SOUTHERN BORDER

Question: Given the urgency of the drug trafficking threat, what is the Customs Service's timetable for completing aerostat gaps that remain along the Southern border?

Answer: At present, Customs has only one operational aerostat systems. The first system, located at Ft. Huachuca, AZ, has only been operational 24-hours-a-day since August 1988 and was the

first fully operational system along the U.S.-Mexico Border. A second system, located at Deming, NM, just became operational in late March 1989.

Final Operating Capability for the following sites is currently estimated as follows: Yuma, AZ, July 1989; Marfa, TX, September 1989; George Town, Great Exuma Island, BS, November 1989; Rio Grande City, TX, January 1990; and Lajas, Puerto Rico, March 1990. The schedule for the third Caribbean system, currently planned for Great Inagua Island, BS, is pending, subject to negotiations and approvals by the U.S. Federal Aviation Administration and final site selection procedures to include detailed topographic surveys and cost estimates of candidate sites.

There are two U.S. Air Force aerostat systems, located at Cudjoe Key and Cape Canaveral, FL, and one U.S. Coast Guard aerostat located on Grand Bahama Island which provide radar data to the interdiction process through the C3I East. The Coast Guard system was originally acquired by U.S. Customs and operationally transferred to the Coast Guard in July 1988.

With the eventual denial of prime air smuggling routes in the Caribbean and along the U.S.-Mexican Border, we can expect the diversion of major air smuggling routes to the Gulf Coast. In anticipation of such events, the Aerostat Joint Program Office has identified potential deployment sites along the Gulf Coast at Matagorda, TX; Morgan City, LA; Alabama Port, AL; Horseshoe Beach, FL; and Venice, FL. Any estimated schedule for these proposed systems will be predicated upon the date funding becomes available and existing contract options can be executed.

AEROSTATS RELATIVE TO RADAR AIRCRAFT

Question: I understand that aerostat systems have extremely low procurement and operations and maintenance costs relative to radar aircraft. Given this cost-effectiveness and their excellent record in interdicting drug traffickers, does the Customs Service have plans to request funds in FY 1990 for the deployment of additional aerostat surveillance systems along the West Coast or the East Coast regions?

Answer: At the present time, the Customs Service has no plans to deploy additional aerostat radar surveillance systems along the East or the West Coasts of the United States. In proportion to the major existing drug smuggling threat along the nation's Southern Border, Customs has concentrated its limited planned resources to this area and in concert with the DOD is endeavoring to address the enormous problem of providing surveillance coverage to the presently wide-open Gulf Coast. Present intelligence estimates consistently indicate that for the immediate future, the primary air smuggling threat to the United

States will continue to be from the South along the U.S.-Mexico Border, the U.S. Gulf Coast and the Caribbean. Current intelligence does not suggest an immediate need to deploy aerostat systems along either the East or West Coast. However, it should be noted that the 1989 DOD Drug Bill assigns lead agency responsibility for surveillance and detection to the Department of Defense and we will be working closely with DOD to periodically reassess these areas and will take appropriate action to counter any increase in threat.

LIVE ENTRY PROCEDURES

Question: Recently, Customs notified the public it would require live entry procedures for imports of textiles from Hong Kong as of April 1, even though Hong Kong maintains an effective export control system for textiles, and its textile exports are not subject to Customs controls. We understand that the reason for the change in entry requirements for Hong Kong products was the concern that the statistical information in documents submitted to Customs after merchandise is released, as is currently allowed for Hong Kong entries, may be less accurate than information in documents submitted to Customs before release.

If this is the case, why has the Customs Service not sought to improve its statistical collection system by changing documentation requirements for release of Hong Kong merchandise rather than add to the work of both importers and the Customs Service through the requirement of live entries. We understand that importers have proposed this as an alternative to live entry.

Answer: Hong Kong does maintain an effective export control system for textiles. And even though textile imports from Hong Kong are not subject to Customs controls, the quantities are monitored by CITA (Committee for the Implementation of Textile Agreements) based on information received from Customs (statistical copy of CF 7501 or ABI transmission of this statistical copy).

Statistical information received by Census under the current procedure could be less accurate than statistical information submitted to Customs under the proposed entry/entry summary procedure. Why? Under an entry/entry summary procedure an import specialist has had an opportunity to review the statistical information, and make any necessary corrections contained on the entry, before it is sent to Census. Under the current procedure the statistical information isn't reviewed by a specialist until after the statistical information has been sent to Census. Then, if there is an error a correction does not have to be made for merchandise that is not subject to a quota controlled by Customs, unless the value of a line item exceeds $10,000.

NEW POSITIONS IN FY 1989

Question: In FY 1989, Congress mandated 640 additional positions for commercial operations for Customs. Please describe exactly how and where these positions were deployed. Does your FY 1990 request provide funding for the positions?

Answer: A report on the 640 additional positions is in the final stages of preparation. These new positions will be funded in FY 1990. They will not be a part of the 396 FTE reduction proposed for FY 1990, which will be taken from other areas.

PROPOSED TRANSFER OF POSITIONS IN FY 1990

Question: I note your budget submission proposes to "transfer" 396 positions from commercial operations to the enforcement areas of Inspection and Control. Where do you plan to take these from commercial operations and how will this reduction affect commercial activities?

Answer: At this time, the specific positions have not been identified. Reductions are expected to come from support areas of Tariff and Trade, commercial processing areas of Inspection and Control, and Regulatory Audit. The Customs Service has been able to process a commercial processing workload which for years has been continually increasing in size and complexity without corresponding increases in resources, largely due to the agency's movement towards a "paperless" environment. Obviously, this is not the solution to all problems. However, in this time of tight budgets, we have to assign our resources to the most pressing needs. At this time the specific effect on commercial activities has not been determined.

BUDGET PROPOSALS

Question: Your budget proposal notes "productivity savings", "A-76 savings" and "FTE Shortfalls" totalling $14,341,000 or 396 positions. What do these categories of reductions mean and how will commercial activities be affected?

Answer: These categories of reductions are part of the Administration's 1990 budget proposals to meet the $100 billion deficit ceiling, imposed by the Gramm-Rudman-Hollings process, without requiring tax increases. Productivity Savings are expected to total $5.6 million and 140 FTE, primarily in the areas of Inspection and Control and Tariff and Trade support. Automated interfaces with the trade community play an important role in relieving Customs personnel from manual procedures. Expanded Automated Manifest System (AMS) participation by air and

sea carriers will allow savings of Inspection and Control support personnel resources. The electronic transmission of manifest data and automated notification of release of cargo will reduce clerical workloads. Increased levels of participation in the Automated Broker Interface and AMS will help Customs to meet the demands resulting from increases in complexity and volume of imports.

A-76 Savings are expected to total $1.1 million and 129 FTE. The U.S. Customs Service is presently studying the feasibility of contracting out portions of Inspection and Control and Regulatory Audit. The potential savings was a figure calculated by OMB, based on prior Governmentwide savings in the A-76 area.

The expected FTE shortfall of $7.7 million and 127 FTE resulted from an OMB analysis of FY 1988 actual FTE costs. OMB used this data, inflated for pay raises in FY 1989 and FY 1990, to determine that Customs could not fully fund the FTE appropriated in FY 1989 and withdrew the FTE's and associated funding.

Automated interfaces with the trade community play an important role in relieving Customs personnel from manual procedures. Expanded Automated Manifest System (AMS) participation by air and sea carriers will allow for savings of Inspection and Control support personnel resources. The electronic transmission of manifest data and automated notification of release of cargo will reduce the clerical workload. The Automated Commercial System (ACS) has also had a great effect on entry units which are responsible for the control of documents and information used in every step of the entry process, from initial presentation through payment of duties. The system has relieved personnel of many routine tasks, offsetting to some degree the dramatic increases in volume. Increased levels of participation in the Automated Broker Interface (ABI) and AMS will help Customs to meet the demands resulting from increases in complexity and volume of imports.

YEAR OF "SIGNIFICANT CHANGE"

Question: You note that 1989 was a year of "significant change" in Customs commercial activities. Please describe how the Customs Service is prepared for these changes and is the funding adequate to handle such major activities as the Harmonized System and the U.S.-Canada FTA.

Answer: The Customs Service is fully prepared to implement new programs and to provide faster and better service to the public. Significant additional resources in staff, equipment and training have been dedicated for this purpose. Customs allocated 101 import specialist positions in 1988 (of which 98 have been filled) and 90 in 1989 to handle new initiatives and to improve quality, timeliness and uniformity of service. 25 Attorneys and ten people for the laboratory system have also been added.

In order to provide the quick, reliable kind of advice the public would need with the implementation of the Harmonized System, Customs implemented the pre-entry classification and 30/120 day binding rulings programs. Approximately 150 import specialist team leaders have been given extra Harmonized System training on specific commodities so they can function as deputies to the national import specialists (NIS) in New York and provide binding classification determinations. To date Customs has reviewed nearly 3,000 ruling requests and has approximately 20 major pre-entry classification projects underway. The program is running exceptionally smoothly. So far no rulings have been late.

In addition to an increase in staff, Customs has committed nearly $2 million for additional equipment, overtime, travel, training and similar support to improve service. We have also committed extensive ACS time and money to automation activities. Our selectivity system for summary processing is automated and a fully automated information exchange will be ready in June. A full scale quality assurance program is underway to improve quality and ensure fairness and equity in treatment. To improve timely decisions of disputed issues, we are taking a critical look at protest and 520(c) processing.

Extensive training for Customs personnel and private trade community people was conducted in the Harmonized System prior to the implementation of the new schedules. Training has been conducted for over 600 Customs employees, including supervisory import specialists, Assistant District Directors (Classification and Value), and regional personnel in 20 locations. 40 Customs employees from various districts were trained as Harmonized System instructors. These instructors trained import specialists, inspectors, entry control personnel, liquidators, auditors and mail branch personnel. Customs training of the private sector (brokers and other entry filers) covered approximately 2400 persons across the country. Courses and seminars were conducted for trade organizations including NCBFAA, AAEI, NCITD and the Air Transport Association. Before the Harmonized System became effective, seminars were held with ABI users regarding the Harmonized System. Customs personnel were trained in accessing and obtaining the data from the database.

Finally, Customs initiated a "Help Desk" to provide program assistance in the Harmonized System, the Rulings Program, CFT, and the Mexican Regime. The Help Desk has been staffed 12 hours a day to provide assistance to the public and to ease implementation. Customs believes all these initiative have been successful, as is evidenced by the smooth transition to these and numerous other new trade programs this calendar year.

Funding is adequate this FY to handle our activities. We, however, could not realize any cuts next FY in order to maintain the same level of activity.

FY 1990 BUDGET REQUEST TO OMB

Question: What was Treasury/Customs request to OMB for FY 90 commercial operations and manpower? How was the figure of $626,124,000 for commercial arrived at in view of its funding by user fee receipts?

Answer: The Treasury/Customs request to OMB for FY 90 commercial operations and manpower was $655,276,000 and 10,443 FTE. The Administration determined the level of funding necessary to maintain the current level of operations, adjusted for potential savings from productivity savings and contracting out some operations.

COMMERCIAL FRAUD DETECTION

Question: The budget proposal states that "the business climate is continuing to present Customs with an increased commercial fraud threat." You stated in testimony that one of Customs priorities will be commercial fraud detection. What type of fraudulent imports is Customs seeing and what methods do you use to investigate them? What commodities and exporting countries have been targeted? How do you ensure that the innocent or legitimate importer will not be impeded and have to absorb losses on shipments delayed at the docks?

Answer: We will continue to utilize and enhance the multidisciplined approach to commercial fraud enforcement. At the headquarters level, support and assistance will be provided to the field offices and fraud programs will be developed and managed. In the field, multidisciplined Commercial Fraud Enforcement Teams have been created to implement commercial fraud enforcement initiatives.

By providing timely analyses of intelligence on developing trade issues, we will more effectively identify and target emerging commercial fraud threats and respond to them by prompt implementation of appropriate enforcement programs. We will identify changing trends in trade and economies of other countries which indicate possible attempts to circumvent U.S. trade laws. A major element of this effort is information developed by our liaison representative to the United States Trade Representative.

A "Beyond Revenue" approach will be incorporated into our commercial fraud enforcement efforts with emphasis in this area to be placed on the protection of intellectual property rights of United States persons.

In the area of intellectual property right protection the countries targeted include: Taiwan, Malaysia, Hong Kong, Japan, Thailand, Singapore. The commodities targeted include; semiconductor equipment and machinery, flat panel display items, telecommunications, semiconductors and auto parts.

Textile fraud will continue to be a high priority enforcement item. Because of the relatively high duty rates and visa/quota restrictions, there is a major motive for unscrupulous importers to circumvent trade laws. Country targeting is difficult in this area because of the ability of the manufacturers to expeditiously transfer production patterns and therefore our enforcement efforts will be dictated by current commercial circumstances.

Steel fraud enforcement will be coordinated through the Commercial Fraud Enforcement Center through the utilization of "Operation Transmetal" to secure the cooperation of foreign governments and provide mobile laboratories to identify illegal transshipment of steel.

We will monitor the United States-Canada Free Trade Agreement (FTA) and pursue a policy of mutual assistance concerning the investigation of violations stemming from the FTA. Areas of primary concern are the transshipment from third countries, problems with the rules of origin and certification procedures. The agreement has been formulated with a reliance on importer/exporter self-certification. This reliance will require a substantial enforcement resource commitment given the many differences between current U.S. and Canadian administrative systems.

We will include the vigorous pursuit and implementation of our Paraphernalia Interdiction Program for Enforcement (PIPE), a broad-based, comprehensive drug paraphernalia interdiction program initiated by the Office of Commercial Fraud Enforcement. As part of Customs' increased efforts to control overall drug trafficking, Operation PIPE supports enforcement of laws prohibiting the importation, exportation, manufacture, sale and transportation of drug paraphernalia.

By combining effective and timely intelligence analyses with the greater use of electronic entry processing we will be in a better position to target commodities, countries, and importers with the highest probability for fraudulent activity. Targeting through greater entry document analysis will reduce the likelihood that the innocent importer will be impeded by the unwarranted examination or detention of his merchandise at the docks.

MANPOWER ALLOCATION TO COMMERCIAL FRAUD

Question: Specify the number of people devoted full time to the commercial fraud function.

Answer: A total of 333 Special Agents and Criminal Investigators, in addition to 99 participants on the Import Specialist Enforcement Teams are dedicated full time to commercial fraud enforcement.

PAPERLESS ENTRY INITIATIVES

Question: Please elaborate on your "paperless entry" initiatives. Is the Automated Commercial System (ACS) processing most merchandise entries?

Answer: Paperless entry has several components: electronic cargo release, line release, and other agency paperless initiatives.

Line Release - Thirty-five percent of merchandise entering the United States is from Canada, half of which is processed using bar-code technology and pre-clearance assessment to qualify for paperless release (currently operational in 40 border sites, processing approximately 25,000 entries per week). Northern border entries which are not processed through Line Release cannot be paperless because they are not processed by cargo selectivity. However, within the next 18 months, cargo selectivity will be introduced on the Northern Border.

Electronic Cargo Release - The remaining 65 percent of merchandise entering the United States is processed by ACS/Cargo Selectivity. Only entries received via the Automated Broker Interface (ABI) are eligible for "paperless" determinations, because of the edit and verification controls we have over these data. In March 1989, 60 percent of entries processed through cargo selectivity were ABI entries, of those, 28 percent were electronic ("paperless").

Electronic cargo release entries, combined with line release entries, resulted in a total of 28 percent of all Customs entries being paperless in March 1989.

Other Agency Paperless - Other agency requirements for paper forms is a constraint on Customs ability to achieve full electronic processing. Customs, teaming with OMB, is making concerted efforts to provide an effective paperless environment for those agencies that currently require documents for review. Currently, some 63 percent of all entries are subject to other agency data, review, or hold for inspection actions that require paper.

CUSTOMS FORFEITURE FUND

Question: Describe the operation of the Customs Forfeiture Fund and provide the most recent data available concerning its assets, transfers and asset sharing. Are there any operational problems with the Fund?

Answer: Briefly, in FY 1988, deposits into the Fund of forfeited seized currency and other monetary instruments and the sale proceeds of forfeited seized conveyences and other property totalled $36 million. Customs Services expenditures from the Fund totalled $8.2 million. A total of $29.8 million from the Fund was returned to the General Fund of the Treasury. Forfeited seized property retained by the Customs Service and other Federal agencies totalled $12.6 million. Assets and currency transfers, totalling $11.2 million, went to State and local enforcement agencies which had participated in joint law enforcement operations with the Customs Service.

We do not feel there are any operational problems with the Fund. Some past concerns of GAO about the administration of the Fund have been addressed by the Anti Drug Abuse Act of 1988. (See the attached report.)

For a more complete description of the operation of the Fund and report of financial data, see the attached copy of the FY 1988 Annual Report to Congress on the Customs Forfeiture Fund.

U.S. CUSTOMS SERVICE

CUSTOMS FORFEITURE FUND

FY 1988 ANNUAL REPORT TO CONGRESS

I. THE CUSTOMS FORFEITURE PROCESS.

A. Customs Mission. 1
B. Disposition of Seized Property. 1

II. RESOURCES NOT DEPOSITED INTO THE FUND.

A. Customs Service Use of Seized Forfeited Property. . 3
B. Forfeited Property Use by Other Federal Agencies. . 3
C. Transfers to State or Local Law Enforcement Agencies. 3
D. FY 1988 Transfers. 4
Table - Listing by Customs Region. 5

III. THE CUSTOMS FORFEITURE FUND.

A. Purpose of the Customs Forfeiture Fund. 8
B. Source of Funds. 8
C. Use of Proceeds from the Forfeiture Fund. 9
D. Customs Service Use of the Forfeiture Fund. 9
E. Clarification of Coast Guard Access to Use of the Fund. 9
F. Summary of Financial Activity for FY 1988. 10
G. Changes in Accounting Procedures. 10
Table - Statement of Income and Expenses. 12
Table - Schedule of Expenditures. 13

IV. OPERATION OF THE CUSTOMS FORFEITURE FUND.

A. Customs Service Policies and Procedures. 14
B. Seized Currency and Forfeited Monetary Instruments. 15
C. Seized and Forfeited Property. 16
Table - Seized Property Data. 20

V. LEGISLATIVE HISTORY.

A. Initial Authorization. 21
B. Revision of Appropriation Limitations on Expenditures. 22
C. Amendments by the Anti-Drug Abuse Act of 1988. 23
D. Table - Appropriation History. 25

SECTION I. THE CUSTOMS FORFEITURE PROCESS.

A. Customs Mission.

The primary mission of the U.S. Customs Service is the collection of revenue, as levied by law on imported goods and merchandise, and enforcement of the prohibition of entry of illegal goods and drugs. To ensure compliance with the law, the Customs Service is authorized to seize property when there is reasonable cause to believe laws enforced by the Customs Service have been violated. In fiscal year 1988, the Customs Service seized forfeited currency/monetary instruments and property which had a total value of $60 million.

B. Disposition of Seized Property.

Property which has been seized may leave the Customs Service custody without being forfeited. Seized property which is not forfeited may be returned to owners through remission. In many instances, property owners are able to regain possession of seized property after paying applicable fines, penalties, duties, Customs holding charges, or other Customs charges.

Seized property which is forfeited, either through legal circumstances or by court order, may be disposed of in several ways. It may be retained for official use by the Customs Service or other Federal agencies. It may be transferred to State or

local law enforcement agencies which participated in operations with Customs which resulted in seizure of the item(s) transferred. In fiscal year 1988, forfeited seized property retained by the Customs Service and other Federal agencies totalled $12.6 million and transfers to State and local law-enforcement agencies totalled $11.2 million.

Forfeited property which is not retained or transferred is accounted for through the Customs Forfeiture Fund. Forfeited property may be sold at auction, in which case the net proceeds of the sale of seized forfeited property are deposited into the Customs Forfeiture Fund. In some cases, forfeited property may be sold at the discretion of the responsible Customs Service District Director. Finally, property which is determined to be unsalable for some reason may be destroyed. Forfeited seized cash or monetary instruments are deposited into the Customs Forfeiture Fund. In fiscal year 1988, deposits of the net proceeds of sales of forfeited seized property and of forfeited seized currency into the Fund totalled $36 million.

SECTION II. DISPOSITION OF SEIZED FORFEITED PROPERTY WHICH DOES NOT INVOLVE THE CUSTOMS FORFEITURE FUND.

A. Customs Use of Seized Forfeited Property.

The Customs Service has been authorized by Congress to use conveyances and other seized forfeited property suitable for law enforcement use. Conveyances and other forfeited seized property may also be retained for official use by other Federal agencies or transferred to State and local law enforcement agencies. In fiscal year 1988, the Customs Service retained property valued at $4 million for use in its law enforcement operations.

B. Forfeited Seized Property Use by Other Federal Agencies.

In FY 1988, property valued at $8.6 million was transferred to other Federal agencies. For example, a vehicle was transferred to the U.S. Park Police, and forfeited seized clothing which was in violation of import quota laws was transferred to the Agency for International Development for use in programs in the countries of Malawi, Mozambique, and Zimbabwe.

C. Transfers to State or Local Law Enforcement Agencies.

Items seized in joint operations with State or local law enforcement agencies may be transferred to those agencies. Authority for sharing is delineated in The Comprehensive Crime

Control Act of 1984 and again in the Anti-Drug Abuse Act of 1988, giving the Commissioner of Customs the authority to transfer to State and local law enforcement agencies seized and forfeited property when a particular agency participated in the seizure or forfeiture. In addition, through Treasury Department administrative policy, the Customs Service may defer its right of seizure in favor of participating State and local agencies who then become responsible for its custody and forfeiture under state or local law.

This authority is consistent with the Custom Service policy of promoting cooperative law enforcement efforts with other law enforcement agencies. Requests by State and local law enforcement agencies to retain forfeited property are processed before requests from the Customs Service or other Federal agencies.

D. FY 1988 Transfers.

In FY 1988, the Customs Service transferred funds and property totalling $11.2 million to State and local law enforcement agencies. Assets shared with State and local law enforcement agencies included 10 aircraft, 14 vessels, 33 vehicles and over $9 million in currency.

U.S. CUSTOMS SERVICE

Assets Shared in FY 1988
with State & Local Law Enforcement Agencies

(dollars in thousands)

State	Type of Asset	Transactions	Value of Transfer
Alabama			
	Currency	2	$80
Arizona			
	Currency	2	$123
	Aircraft	1	$25
	Vehicles	2	$2
	State subtotal		$150
California			
	Currency	71	$7,049
	Other Property	1	$1
	Vehicles	8	$204
	State subtotal		$7,254
Colorado			
	Currency	1	$15
Florida			
	Aircraft	5	$157
	Currency	9	$1,495
	Other Property	2	$3
	Vehicles	1	$17
	Vessels	12	$571
	State subtotal		$2,243
Georgia			
	Aircraft	1	$38
	Currency	1	$101
	Vehicles	1	$3
	Vessels	1	$44
	State subtotal		$186

State	Type of Asset	Transactions	Value of Transfer
Idaho			
	Vehicles	2	$4
Illinois			
	Currency	1	$27
Louisiana			
	Vessels	1	$4
Massachusetts			
	Currency	1	$100
Michigan			
	Other Property	1	$1
	Vehicles	1	$2
	State subtotal		$3
Mississippi			
	Currency	3	$138
	Other Property	2	$1
	Vehicles	3	$12
	State subtotal		$151
Montana			
	Other Property	1	$1
	Vehicles	6	$27
	State subtotal		$28
Nevada			
	Aircraft	1	$24
New Jersey			
	Currency	3	$202
	Vehicles	2	$25
	State subtotal		$227

State	Type of Asset	Transactions	Value of Transfer
New Mexico			
	Aircraft	1	$70
New York			
	Currency	1	$1
North Carolina			
	Aircraft	1	$250
Pennsylvania			
	Currency	1	$108
Texas			
	Aircraft	1	$40
	Currency	8	$73
	Vehicles	3	$82
	State subtotal		$195
Virginia			
	Currency	1	$7
	Vehicles	2	$8
	State subtotal		$15
Washington			
	Vehicles	1	$3
Other Government			
	Currency	1	$26
	Vehicles	1	$5
	Subtotal		$31
Total Assets Shared:			$11,168

98-164 O - 89 - 6

SECTION III. THE CUSTOMS FORFEITURE FUND.

A. Purpose of the Customs Forfeiture Fund.

The Customs Service has been authorized by Congress to utilize the net proceeds it generates from seizures of monetary instruments and the sale of forfeited seized property to fund certain administrative and enforcement expenses to the extent permitted by statutory and Congressionally-mandated appropriation limitations. These purchases are accomplished through the Customs Forfeiture Fund.

B. Source of Funds.

Customs Forfeiture Fund receipts are derived from: (1) seized and forfeited currency and monetary instruments; and (2) net proceeds from the sale of seized and forfeited property (including vehicles, vessels, aircraft, and real estate).

Imported merchandise considered to be unclaimed, involuntarily abandoned, or general order merchandise under 18 USC 1490-1493, 19 USC 1559, and Part 127 of the Customs Regulations, are not in the scope of this program.

C. Use of Proceeds from the Forfeiture Fund.

Authorizing legislation allows the use of proceeds from the

Fund by the U.S. Customs Service, the U.S. Coast Guard, and other Federal Government agencies for certain specified law enforcement-related purposes. In addition, the Customs Service may reimburse some expenses of cooperating State and local law enforcement agencies participating in joint law enforcement operations with the Customs Service or the Coast Guard which result in seizures of cash or property.

D. The Customs Service Use of the Forfeiture Fund.

Besides expenses related to the disposal of seized currency and property, some examples of Custom Service purchases through the Fund are mobile radios with scramblers for secure communications, and necessary equipment to outfit seized vessels, aircraft and vehicles for Customs Service law enforcement use. The Forfeiture Fund also provided payments for information leading to seizures and purchase of evidence for prosecution. Tables on pages 12 and 13 show a breakdown by major categories of these expenditures and comparison with prior years.

In 1988, the Customs Service used $8.2 million of the appropriation limitation of $10 million from P.L. 100-202.

E. Clarification of Coast Guard Access to Use of the Fund.

All amounts in the fund will now be available for seizure expenses. The Customs Service discretion to pay Coast Guard

seizure expenses has been removed and, beginning in FY 1989, the Customs Service will pay Coast Guard seizure expenses to the extent that there are available amounts in the Fund. Control and administration of the Fund remains with the Customs Service. The two agencies are negotiating an interagency agreement to establish procedures to implement these amendments.

By law, the Coast Guard is given access to proceeds from its seizures for certain discretionary expenses, provided Congress appropriates more than $10 million to Customs for discretionary expenses from the Fund. Examples of these expenses include: retrofitting conveyances for official use, paying expenses of State and local law enforcement agencies incurred as a result of joint operations with the Coast Guard, and expenses incurred in enforcing certain environmental laws with respect to vessels.

F. Summary of Financial Activity for FY 1988.

Receipts deposited into the Fund in FY 1988 and recoveries of prior year obligations totalled $38.0 million. Transfers to the General Fund of the Treasury totalled $29.8 million. The Customs Service expenditures from the Fund totalled $8.2 million.

G. Changes in Accounting Procedures.

The original accounting procedures involved netting of expenses against sale proceeds before funds were deposited into

the Forfeiture Fund. Ongoing expenses, as well as the cost of the Servicewide contractor, were initially charged against the Customs Service Salaries and Expenses appropriation, which was later reimbursed from the proceeds of sale and the Forfeiture Fund. While authorized by statute, GAO stated that the practice of "netting" did not conform with general Federal Government accounting standards.

The Anti-Drug Abuse Act eliminates the appropriations cap on necessary expenditures and establishes a permanent appropriation which does not have to be renewed each year. Beginning in FY 1989, all proceeds in the Fund will now be available to pay seizure expenses. This will allow the Customs Service to make Fund accounting procedures conform with uniform, less cumbersome federal standards. Congress continues to maintain control over discretionary expenditures as they remain subject to appropriation limitations.

U. S. CUSTOMS SERVICE FORFEITURE FUND

FY 1988 HIGHLIGHTS

- Deposits into the Fund decreased from $49.8 million in fiscal year 1987 to $35.9 million in fiscal year 1988.
- Customs Service expenditures from the Fund totalled $8.2 million in fiscal year 1988.
- Assets shared with participating State and local law enforcement agencies had a total value of $11.2 million in fiscal year 1988.

STATEMENT OF INCOME AND EXPENSES
Fiscal Year 1988
(dollars in thousands)

Balance, beginning of fiscal year		$20,000
Recoveries from prior year obligations		$2,104
Deposits into the fund		$35,938
Total funds available 1/		$58,042
Expenses (obligations)		
Excess costs	$4,873	
Pay off liens	$31	
Destruction of Seized Property	$333	
Equipping/repairing retained conveyances	$888	
State & local agencies	$272	
Communication equipment	$1,724	
ADP/Software	$ 110	
Total Expenses		$8,231
Transfers to Treasury General Fund		
From FY 1988 collections	$27,707	
From prior year obligations	$ 2,104	
Total Transfers to Treasury General Fund		$29,811
Ending balance, carryover to FY 1988		$20,000

1/ Appropriation Act limited obligational authority in FY 1986 to $10 million.

NOTE: Some numbers differ from the FY 1990 President's Budget Appendix, which was based on preliminary accounting data which have now been finalized.

U. S. CUSTOMS SERVICE FORFEITURE FUND

SCHEDULE OF EXPENDITURES

(dollars in thousands)

Fiscal Year:	1985	1986	1987	1988
Excess Costs Related to Seizures	$1,623	$3,171	$1,020	$4,873
Pay Off Liens	---	$19	$156	$31
Destruction of Seized Merchandise	$45	$63	$75	$333
Payments for Information	$617	$442	$3,205	---
Payment of Awards	$175	$630	---	---
Equipment/Repair Seized Vessels and Conveyances	---	$3,141	$6,419	$888
State & local agencies	---	---	---	$272
Communication Equipment	$2,418	---	$5,656	$1,724
ADP/Software	---	---	---	$110
Total	$4,878	$7,466	$17,531	$8,231
Enacted Budget Authority	$6,000	$7,656	$18,000	$10,000

SECTION IV. OPERATION OF THE CUSTOMS FORFEITURE FUND.

A. Customs Service Policies and Procedures.

The Customs Service has developed a series of formal documents to establish policy and procedures and assign responsibilities for the operation of the fund to ensure that seized assets are properly safeguarded, managed, and accounted for from initial seizure to final disposition. These are described below:

1. Customs Directive 5310-07, dated July 9, 1987, provides for national policy and procedures on the processing of seized currency/monetary instruments for deposit and an inventory system.

2. Customs Directive 5230-05, currently being revised, will provide procedures for monitoring and controlling resources for the Customs Service seizure and forfeiture program.

3. Handbook for Customs Seized Property Program, HB 5200-04, dated September, 1987, prescribes policy, procedures, and responsibilities for all Customs Service and contractor organizations involved in this program.

4. Handbook for Fines, Penalties and Forfeitures Programs, HB 4400-01, dated April 1, 1988, prescribes policy,

procedures, and responsibilities for District FP&F Officers.

5. Property Officers Handbook, HB 5200-02, dated February 1, 1985, prescribes policy, procedures, and responsibilities for the Customs Service and contractor organizations and individuals involved with seized property.

B. Seized Currency and Forfeited Monetary Instruments.

Customs Directive 5310-07 dated July 9, 1987, provides for policy and procedures on the processing of seized currency/monetary instruments for deposit. Seized currency/monetary instruments must always be considered evidence until the Customs Special Agent-in-Charge, in conjunction with the U.S. Attorney, expressly consents to treating such items as non-evidentiary. As soon as possible following seizure, the investigating Special Agent must consult with the local U.S. Attorney's office to establish the seized currency/monetary instruments as either evidentiary or non-evidentiary. This determination should be obtained within 60 days after the seizure, or 10 days after indictment (whichever comes first).

All seized currency/monetary instruments identified as non-evidentiary by the U.S. Attorney are required to be deposited within 10 days after formal notification of the non-evidentiary status. All evidentiary seized currency/monetary instruments forfeited by court order are required to be deposited within 10

days after receiving formal notification from the U.S. Attorney that the forfeited seized currency/monetary instruments are no longer needed as evidence.

Once the forfeiture is complete, Districts are required to notify the Customs Service National Finance Center of any approved asset sharing claim on the seizure. Approved claims are to be paid prior to deposit of forfeited monetary instruments into the Customs Forfeiture Fund. In addition, the National Finance Center is required to be notified of any expenses incurred directly relating to the seizure or forfeiture of the currency/monetary instruments. Appropriate expenses are to be reimbursed to the Salaries and Expenses Appropriation. When all approved asset sharing claims are paid and all appropriate expenses are reimbursed to the Salaries and Expenses Appropriation, the remaining seizure balance is credited to the Customs Forfeiture Fund.

C. Seized and Forfeited Property.

Customs Seized Property Handbook, HB 5200-04, dated September, 1987, prescribes policy, procedures, and responsibilities for all Customs Service and contractor organizations involved in the processing of all personal property that comes into the possession of the Customs Service as a result of seizure, forfeiture, or voluntary abandonment.

The Customs Service has 45 District Offices throughout the United States and its territories. Each District has a number of port offices which are located at the points of importation. These are the points at which most seizures occur.

The total process of record keeping, holding, maintaining, and selling or otherwise disposing of property requires the use of Customs Service personnel who are always in short supply and who could otherwise be used in the Customs Service primary mission of enforcing the law and collecting the revenue.

The Customs Service determined that the most efficient logistics management of seized property would be to use a private sector vendor for storage, mairtenance, and disposition. The Customs Service therefore contracts for the services of holding and disposing of seized property. Actual control of the Fines, Penalties and Forfeitures process remains the responsibility of the District Director.

When property is seized by the Customs Service, laws require that certain procedures be followed to ensure protection of the rights of owners and violators: notifying of owners/violators; allowing time for petitioning for remitting; legal advertising of intent to forfeit; or court processing for seized property subject to judicial forfeiture all cause the elapse of time between seizure and forfeiture. Seized property may remain in the custody of the Customs Service from a few hours to 18 months

or more depending on circumstances. Once seizure has occurred, the property may be remitted upon payment of expenses and/or penalties or successful petitioning by the violator or owner.

Property not remitted becomes forfeited to the U.S. Government unless successfully contested in a court of law. Further, forfeiture of property valued at more than $100,000 must be decreed by the Federal courts and must be held by the Customs Service until the court has specified the action to be taken except that prohibited merchandise may be summarily forfeited without regard to its value. Forfeiture of conveyances used to transport narcotics is not subject to court action unless bond is posted.

All property seized, forfeited, or voluntarily abandoned is assigned the 13 digit seizure number assigned to the case and tracked by the Customs Property Tracking System (CPTS). Property is transferred for storage by the Servicewide contractor, but constructive custody is retained by the seizing District Director.

Appraisal of property is a Customs Service responsibility and is rendered whenever possible prior to transferring property to the Servicewide contractor. Where there are no established blue book values, the Customs Service obtains the services of registered licensed appraisers or marine surveyors to comply with this requirement.

Disposition of forfeited property can occur in several ways. It can be retained for Customs Service official use or use by any other Federal agency, transferred to any State or local law enforcement agency which participated in the seizure, or sold at public auction. When the appraised value of the property is less than $1,000, the District Director has the options of quick sale, destruction, or other disposal of the property.

The first priority for disposition of forfeited property is fulfilling the needs of the seizing agency and other Federal agencies by placing the property into official Government use.

Forfeited property which is not needed by the Government is to be sold or otherwise disposed of in a manner best benefitting the Government (subject to a court direction). The proceeds from the sale of forfeited property, after costs of holding and sale have been deducted, are deposited to the Customs Forfeiture Fund.

U. S. CUSTOMS SERVICE FORFEITURE FUND

SEIZED PROPERTY DATA

(dollars in thousands)

Sources of Receipts:	
Seized cash	$31,936
Conveyances and Other Property	$4,002
Total	$35,938
Liens and Mortgages paid:	$31
Total of defendant's equity in property valued at $1 million or more:	None

SECTION V. LEGISLATIVE HISTORY

A. Initial Authorization for the Customs Service Forfeiture Fund.

A significant result of increased emphasis by the Customs Service on enforcement activities in recent years has been the acquisition of large amounts of seized property, including vehicles, vessels, aircraft, various items of high technology, and a wide assortment of general merchandise. Most Customs districts and ports experienced increased administrative workloads associated with the management of seized property. Congressional concern about the cost and efficiency of storing, protecting, and maintaining the property seized for Customs violations led to a GAO study in 1983. The product of that evaluation was a report entitled "Better Care and Disposal of Seized Cars, Boats and Planes Should Save Money and Benefit Law Enforcement".

Following the GAO recommendations, Congress passed the Comprehensive Crime Act (P.L. 98-473) (Senate Version) and the Tariff and Trade Act (P.L. 98-573) (House version). These bills increased the dollar ceiling for administrative forfeiture from $10,000 to $100,000 and made civil forfeiture available without a value limitation for conveyances used to transport illegal narcotics.

In addition, these bills authorized the establishment of the Customs Forfeiture Fund to be used for (1) payment of unrecovered excess expenses from the sale of seized property, including investigative costs; (2) payment of awards of compensation to informers; (3) payment of liens related to seizures; (4) equipping forfeited vessels, vehicles, and aircraft for law enforcement purposes; (5) payment of claims of "parties of interest to property disposed"; (6) purchase for evidence in cases of smuggled controlled substances and violations of currency and foreign transactions reporting requirements; (7) destruction of drugs; (8) reimbursement to citizens for expenses incurred in cooperating with the Customs Service and (9) costs of publicizing the availability of awards. Both laws amended Section 613a of the Tariff Act of 1930, and are codified in Sections 1613a and 1613b, Title 19 of the United States Code Annotated. The Customs Forfeiture Fund was established on October 12, 1984 (for fiscal year 1985).

B. Revision of Appropriation Limitations on Expenditures.

Under the initial legislation, the Fund was to be in operation through the end of fiscal year 1987, subject to an annual appropriation of not more than $10 million for fiscal year 1984, not more than $15 million for fiscal year 1985, and not more than $20 million for fiscal years 1986 and 1987, with unappropriated amounts in excess of $10 million, remaining in the Fund at the end of the year, to be deposited to the General Fund

of the Treasury. In addition, P.L. 98-473 and P.L. 98-573 provided that the amount in the Customs Forfeiture Fund not currently needed for the purposes of the fund be invested in obligations of, or guaranteed by, the United States. However, since the Treasury Department already earns interest from deposits of the Customs Service accounts of seized currency and other monetary instruments, the Financial Management Service agreed in July, 1987, that the Customs Service would no longer purchase Treasury investments.

The appropriation and carryover provisions were amended by Section 3142 of the Omnibus Drug Act of 1986 (P.L. 99-570), which authorized a maximum of $20 million to be appropriated from the Fund for fiscal years 1987 through 1991, and requires that unappropriated amounts in the Fund in excess of $20 million at the end of each fiscal year be deposited to the General Fund of the Treasury.

C. Amendments by the Anti-Drug Abuse Act of 1988

The Anti-Drug Abuse Act of 1988 (P.L. 100-690) contains amendments which will improve the administration of the Customs Forfeiture Fund. The law enforcement purpose of the Fund remains unchanged. In addition, the use of the Fund by the Coast Guard is clarified.

The Act establishes a permanent-indefinite appropriation to

cover expenses of administering the fund. Up to $20 million per year is authorized for Customs Service and Coast Guard discretionary expenditures. The annual carryover amount is changed from $20 million to $15 million. Unobligated amounts in excess of $15 million are to be transferred to the General Fund of the Treasury.

Other provisions in the Act direct the Commissioner of Customs to make available to the U.S. Coast Guard appropriated funds in excess of $10 million from proceeds derived from seizures by the Coast Guard. These funds are authorized for the same law enforcement-related uses by the Coast Guard as for the Customs Service.

U. S. CUSTOMS SERVICE FORFEITURE FUND

APPROPRIATION HISTORY TO DATE

(dollars in thousands)

1985

Beginning balance	$0
Collections	$10,079
Interest earned on investments	$144
Total available for obligation	$10,223
Obligations (Appropriation $6,000,000)	-$4,879

1986

Carryover from 1985/beginning balance	$5,344
Collections	$41,394
Interest earned on investments	$385
Total available for obligation	$47,123
Obligations (Appropriation $8,000,000)	-$7,487

1987

Carryover from 1986/beginning balance	$39,637
Collections	$49,786
Interest earned on investments	$1,606
Total available for obligation	$91,029
Obligations (Appropriation $18,000,000)	-$17,531
Transfer to Treasury General Fund (1987)	-$24,607
Transfer to Treasury General Fund (1985/86)	-$27,873

1988

Carryover from 1987/beginning balance	$20,000
Recoveries from prior year obligations	$2,104
Collections	$35,938
Total available for obligation	$58,042
Obligations (Appropriation $10,000,000)	-$8,231
Transfer to Treasury General Fund	-$29,811
Ending balance (carryover to 1989)	$20,000

OMNIBUS DRUG BILL FY 1989

Question: The Customs Air Program received additional funding in FY 89 under the Omnibus Drug Bill. How was this used and describe any increases in seizures as a result of these resources. What types of aircraft and equipment are currently being used by drug smuggling organizations?

Answer: The Customs Aviation Program received $7.0M under the Omnibus Drug Bill. These funds will be used to procure spare radar parts for the P-3AEW Program.

We believe it is premature to attempt to quantify any fluctuation in seizures as a result of a detection system largely not in place. We would point out that where it is in place (S.E. Florida and Ft. Huachuca, AZ), it is denying air smugglers undetected access to those specific border areas and forcing changes in modes and methods of smuggling. A noticeable increase in airdrops to vehicles/vessels and landings outside the U.S. is occurring.

Air smugglers use any and all types of aircraft, but typically favor light general aviation aircraft. These aircraft are single- or twin-engine, and are usually modified extensively with additional long-range navigation equipment, additional fuel capacity and/or electronic communication equipment.

LOCATION OF CUSTOMS NATIONAL AVIATION CENTER (CNAC)

Question: Where is the Customs Air Command Center located and is it accessible enough to the Southern border region?

Answer: The Customs National Aviation Center (CNAC) is located in Oklahoma City, OK. It is an operational field Headquarters that provides operational, administrative and logistical control and accountability over all nationally-deployed Customs air resources. CNAC is not only accessible to the Southern border region, but is in close proximity to both the U.S. Department of Transportation, FAA National Training Facility and the U.S. Air Force Headquarters for AWACS aircraft, stationed at Tinker AFB. Additionally, CNAC is electronically linked to both C3I East (Miami, FL), West (Riverside, CA) and various law enforcement data systems, i.e., TECS, EPIC, NADDIS, NNBIS, CIA, NSA, DIA, FBI, DEA and INS.

DECREASE IN NONRECURRING EXPENSES FOR FY 1990

Question: The budget proposal for FY 90 indicates a $30 million increase in the Air Program offset by a $51 million decrease in "nonrecurring expenses." Please describe the exact program and equipment changes to be made - both increase and decrease.

Answer: Described below are the increases and decreases as shown in the FY 1990 budget submission for the Aviation Program.

Gross increases included the following:

	($000)
Spares for the P-3 AEW aircraft	800
Sensor spares for aircraft	1,100
Increases due to inflation	1,967
Increased O&M costs due to additional flight hours and acquisition of new assets/ facilities	26,258
Aerostats	(19,917)
Black Hawk helicopters	(6,176)
Albuquerque hangar facility	(165)
	$ 30,125

Gross decreases include the following for one-time expenses/transfer of assets:

Citation modification	9,045
Radar sensor spares	6,434
Over-the-Horizon Radar	14,800
Albuquerque hangar	3,580
Drug Bill funding	7,000
Transfer of E-2C aircraft to Coast Guard	10,400
	$ 51,259

STATUS OF FACILITATION EFFORTS IN PASSENGER AND CARGO PROCESSING

Question: What is the status of facilitation efforts of passenger and cargo processing?

Answer: Under the new air passenger processing strategy for the 1990's, flights will be determined to be high or low risk and passengers from those flights will be segregated into high and low risk areas in the Federal Inspection Facilities (FIS). All passengers in the high risk area will be inspected. Those

passengers in the low risk areas will be processed using the Red/Green approach. If a passenger has nothing to declare and chooses the green "door", he will not be stopped by Customs unless an inspector determines a need to do so.

In the area of cargo processing, Customs plans to expand the electronic filing (paperless) programs including: Electronic Entry Filing, Automated Invoice Interface, Automated Manifest for vessel shipments, Line Release Electronic Entry Summary, Line Release enhancements and modifications for testing in the air and seaport environment. Communications testing for automated air manifest is currently underway. Our target start-up date for testing with participating airlines, is May of this year.

JACKSONVILLE STAFFING/NATIONAL GUARD

Question: Could you advise us as to how the federal role in the handling and inspecting of containers at the Port of Jacksonville could be improved, and whether additional Customs inspectors are available? In addition, funding was provided by the Fiscal Year 1989 Department of Defense Appropriations bill for the National Guard to become involved in drug enforcement and interdiction operations. Could you also advise us with respect to the assignment locations of those National Guard personnel?

Answer: As stated in a previous response, because of the large volume of high risk containerized cargo which enters the United States through Jacksonville, two new inspector positions are being added to that location, and plans are underway to utilize 14 Guardsman from the Florida National guard to support our container examination initiative in Jacksonville. We are confident that these actions will enable us to effectively meet the assessed threat in the Jacksonville area.

Customs managers have also sought to minimize cargo delays and improve operations by collocating and prioritizing the CET and devanning operations. In addition, in order to further reduce stripping costs and cargo delays, Customs officials in Jacksonville are currently soliciting bids to establish and operate a Centralized Examination Station (CES) within the port.

During Fiscal Year 1989, National Guardsman will be utilized to assist Customs officers in examining high risk cargo and conveyances arriving from narcotics source/transit countries. These personnel will primarily be used in four states: Florida, Texas, Arizona, and California.

QUESTIONS FOR THE RECORD FROM CONG. WILLIAM THOMAS

COUNTRY OF ORIGIN MARKING OF IMPORTED FRUIT JUICE

Question: What is the current status of Customs efforts regarding the country of origin marking of imported fruit juice concentrate?

Answer: On June 7, 1988, Customs published two notices in the Federal Register concerning the country of origin marking of imported fruit juice concentrate. One notice extended the major supplier marking rule now used for orange juice, to other fruit juices. Major supplier marking permits a processor that obtains 75% or more of its imported concentrate from one source country to reveal only that one foreign source. If no one foreign source accounts for at least 75% of imported concentrate then all source countries must be disclosed.

The second notice proposed to eliminate major supplier marking as an acceptable method of marking in favor of all sources marking. The proposal was prompted by concerns that major supplier marking does not provide the level of information contemplated by the marking statute, i.e., full disclosure, and concerns over foreign fruit which is the source of imported concentrate having been treated with pesticides that are banned in the U.S. Public comments received in response to that notice have been reviewed and a position paper is currently being reviewed.

The major supplier marking rule was developed in consideration of facts pertaining to the processing of orange juice. A single foreign source, Brazil, accounted for the overwhelming majority of U.S. imports of orange juice concentrate for the years 1980 to 1985, contributing between 92.4% to 97.9% of such concentrate.

However, a vastly different set of facts exists with regard to apple and other juice concentrate. Apple juice concentrate comes from 36 different countries. We are currently working on a rule to take into account the full range of comments received recognizing Customs obligation to uphold country of origin marking. Our final determination will be made public in a Federal Register notice. Inasmuch as no final decision has been made, it is not possible to provide any further details at this time.

SAM M. GIBBONS, FLORIDA, CHAIRMAN
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March 22, 1989

The Honorable William von Raab
Commissioner
U.S. Customs Service
1301 Constitution Avenue, N.W.
Washington, D.C. 20229

Dear Mr. von Raab:

As a followup to your testimony today at the fiscal year 1990 budget authorization hearing before the Subcommittee on Trade, I would like to obtain Customs' responses to the enclosed five witness statements delivered after your appearance. Since these statements contain serious charges, the Subcommittee would appreciate a point-by-point response to each allegation as soon as possible. We will make Customs' responses a part of the printed hearing record.

Sincerely,

Sam M. Gibbons
Chairman

SMG/fpp

Enclosures

Customs Responses to Public Witness Statements

COMMENTS TO TESTIMONY OF WILLIAM D. OUTMAN OF THE JOINT INDUSTRY GROUP

TIMELINESS OF RULINGS

Comment: It is not unusual for even the least complicated ruling to involve several months from date of receipt of the case at Headquarters to the date of issuance of the decision, and in many cases the delay is far longer.

Response: It is true that there have been delays in the issuance of Customs decisions. The new 30/120 day Binding Ruling program, however, mandates that certain Headquarters rulings be issued within 120 days. In addition, the number of attorneys in the general classification program area are almost being doubled this fiscal year, to ensure that decisions are issued in a more timely and uniform manner.

ISSUANCE OF CUSTOMS RULINGS

Comment: Enforcement statistics of the Customs Service on a variety of alleged violations of Customs law are meaningless if the business community is not being informed of the Customs Service's interpretations and application of their own regulations and rulings.

Response: In compliance with that provision of 19 U.S.C. 1625 which requires the U.S. Customs Service to publish a decision in the Customs Bulletin, "Within 120 days after issuing...or...otherwise make such decision available," the U.S. Customs Service routinely publishes in the Customs Bulletin in full text or by abstract, rulings and decisions of the Office of Regulations and Rulings. All rulings and decisions are identified in the Legal Retrieval System (LPRS), Keyword Index (as required by 19 CFR 103.4(b)) with a substantive number of those rulings reproduced in full text facsimile in the Decisions/Rulings Microfiche System (with cross-reference to the LPRS). Both microfiche systems are issued on a quarterly basis as required by 19 CFR 103.4.

Additionally, the Customs Service issues the monthly Commodity Classifications Under the Harmonized System rulings packet which publishes numerous, significant classification rulings in full text with a table of contents and index. Also, the Customs Service will soon issue a separate LPRS microfiche index to Harmonized System classification rulings issued by the Customs Service Headquarters and the New York Seaport Area. Lastly, hundreds of classification rulings are now included in the Mead Data Central LEXIS research network and are ready for immediate recovery for those who subscribe to that system.

Customs is also developing a rulings module for easy retrieval of information by Customs employees. Customs plans to make rulings/decisions available to the public, on a subscription basis, through electronic media (tape or disk). The module will contain NIS and Headquarters rulings/decisions and should be implemented in the summer of 1989.

STATEMENT OF WILLIAM D. OUTMAN

ON BEHALF OF THE JOINT INDUSTRY GROUP

Comment: Another recent enforcement effort became visible to the Joint Industry Group when the Customs Service sent form letters to 1,360 importers informing them of a formal investigation directed toward, "but not limited to, transaction value and/or exclusions from transaction value (e.g., international freight what we understand is called "Operation RAP are of great concern in the trade community, but not because rebates of international freight charges were being investigated. Truly fraudulent business operations are as much a threat to legitimate business concerns which import as they are to purely domestic business firms. The greatest concern is that some of the language of the letters appears to foreclose the right of prior disclosure which is established in 19 U.S.C. 1592 (c)(4).

Response: We are sensitive to and can well appreciate the concerns of the importing public and their advocates, regarding their interpretation of the letter which Customs sent. Their primary concern appears to be that this is an attempt by Customs to abridge an importers statutory benefits of "prior disclosure" as provided for in Title 19, United States Code, Section 1592 (c)(4). We would like to clarify our position on this issue for you. It is not our intention to abrogate the statutory privileges of the "prior disclosure" provision of Title 19, United States Code, Section 1592(c)(4). All importers are entitled to equal access to apply for the benefits which are provided for therein.

It is Customs position that such a letter, in itself, will not preclude prior disclosure by the person receiving such letter with respect to all Customs matters. Moreover, despite the receipt of such a letter, a person may make a claim for prior disclosure in accordance with the procedures set forth under 19 CFR 162.74 The final decision on whether a person qualifies for prior disclosure treatment will be based on several factors which will be evaluated by a noninvestigatory office, in accordance with the law. However, it is definitely not Customs intention to penalize importers when there is no evidence to indicate that they did not know or that they should have known that rebates were being received on ocean freight and marine insurance and then they did not declare those rebates to Customs.

STATEMENT OF WILLIAM D. OUTMAN

ON BEHALF OF THE JOINT INDUSTRY GROUP

Comment: As suggested in our letter to the Deputy Commissioner of Customs on December 14, 1988, the Joint Industry Group feels that it would be very detrimental to both the Customs Service and the trade community if the investigatory approach which could be inferred from the original letter is pursued to the point where the "voluntary compliance which lies at the heart of effective Customs administration will become a thing of the past". Another concern is that this type of investigative approach inevitably leads to costly record searches which could be avoided if more specific information were made available in the notice of investigation. A member reported receiving a quite similar letter dated February 17th dealing with investigations just as broadly based, "directed toward but not limited to transactions values and components thereof (e.g., assists) declared to Customs since January 1, 1984." At this time the Joint Industry Group continues to follow the course of these investigations with concern, and would appreciate the opportunity to check back with the Committee on this matter when appropriate.

Response: The letter dated February 17,1989, to which Mr. Outman refers was sent to three importers by the Special Agent In Charge, San Francisco, in furtherance of an investigation underway in that district. While it is commonplace to notify an importer that he is being investigated for a fraudulent importing practice, it is not standard practice to make broad requests for information from an importer which are outside the scope of that which the investigatory record indicates is reasonable, and no such request was made in this case. We have enclosed a copy of that letter, as well as the report of investigation which resulted.

Enclosures

February 17, 1989

Hewlett - Packard Company
3000 Hanover Street
Palo Alto, CA. 94304

Dear Sir:

This is to advise you that the U.S. Customs Service, Office of Enforcement, has commenced a formal investigation, as defined in Title 19, Code of Federal Regulations, Section 162.74, of import transactions involving the Hewlett - Packard Company and related parties.

The investigation is directed toward, but not limited to, transaction values and components thereof (e.g., assists) declared to Customs since January 1, 1984.

It has come to our attention that some companies are failing to declare assists provided directly or indirectly to foreign producers or vendors of merchandise imported into the United States. Assists are defined in Title 19, Code of Federal Regulations, Section 152.102(a) and include materials, components, parts, tools, dies, engineering, development and design provided to a foreign supplier free of charge or at a reduced cost. The U.S. Customs Service requires that the value of assists be added to the price paid or payable pursuant to Title 19, Code of Federal Regulations, Section 152.103(b)(iii).

Manufacturers, exporters and importers who have failed to declare all elements of transaction value are encouraged to make duty tenders and provide all pertinent information to the U.S. Customs Service on or before March 22, 1989. These actions may be considered an extraordinary mitigating factor in respect to any possible civil penalty action that might be commenced against the importer.

response received on 3/22

For further information contact:

Special Agent Maura McNulty
U.S. Customs Service
Office of Enforcement
1700 Montgomery Street, Suite 445
San Francisco, California 94111
(415) 556-3139

Sincerely,

CODE AND DATE	[illegible] 3/17/89		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SURNAME			Philip T. Kline				
			Special Agent in Charge				
CODE AND DATE	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SURNAME							

DEPARTMENT OF THE TREASURY · U.S. CUSTOMS SERVICE CORRESPONDENCE APPROVAL AND CLEARANCE Form 100 (11-19-73)

COMMENTS TO TESTIMONY OF THE NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION

RESOURCES

Comment: Last year we told you how difficult it was to reach an import specialist to clarify questions about the correct duty and classification, or application of the relevant U.S. statute, or other such key questions. That situation has not improved. And, the Office of Regulations and Rulings -- where brokers go to ensure observance of Customs' law --continues to be hamstrung by adequate resourcing.

Response: This Fiscal Year we have increased our import specialist positions by 90 and our Office of Regulations & Rulings attorneys by 25. This increase in staff should eliminate the problem of reaching import specialists and past resourcing problems.

BROKER COSTS

Comment: We continue to caution the Customs Service against overreaching, overextending, and overcommitting. As NCBFAA President Paul F. Wegener has said before this Committee, brokers are practical people. They want more than a vision, they want essential details: how will it work? how much will it cost? can we do it? The costs are highly significant, by some estimates 25 percent of funds expended. Please consider the magnitude of costs to the customs broker. We're matching them: each time a new dollar is spent on a new system or a new piece of hardware, 1,400 broker firms are faced with the cost of comparable acquisitions. We are finding that sometimes the changes are coming faster than our ability to absorb them. Costs can easily outstrip our profits if we let them -- and the pressure is intense from Customs to do so. Think then, if you will, Mr. Chairman, of the resources that Customs must go through as they launch into the automated manifest system, automated passenger systems, customs information exchange and others.

Response: Since 1985, the ranks of customs brokers have swelled from approximately 1,500 to the 1,709 firms licensed today. During this period there have been mergers, absorptions, and buy-outs which exert a diminishing effect on this population. These data suggest that automation is exerting a positive effect on the industry.

The 1988 ACS User Satisfaction Survey of 400 brokers showed that 68 percent perceived Automated Broker Interface (ABI) to be a marketing advantage, 53 percent reported increases in productivity, 57 percent reported the ability to provide increased services to customers, and 83 percent gave ABI credit for enabling the broker to hold his current customers or increase his customer base.

Although the pace of ACS development is fast, brokers appear to be keeping up. The majority of ABI brokers are requesting additional capabilities, such as a protest query and filing capability, quota by category query, two-way eMAIL, Automated Clearing House through Automated Broker Interface, Temporary In-Bond through Automated Broker Interface, Warehouse, Drawback and more.

The vast majority of brokers now entering the system are being supported by service bureaus and software vendors, rather than assuming the burden of program development within the firm. This spreads the costs of accommodating new features among many users. The industry has been given advanced information on what the programming needs will be in the near future, and have prepared for it. Whole new populations of users are joining the system, such as air carriers and package couriers, and some of the system change is designed to serve them.

A very significant programming burden to the automated broker is in response to other government mandated requirements, such as conversion to the Harmonized Tariff System, the beginning of the Canadian Free Trade Program, the Mexican Regime, the Israeli Free Trade Program and other. As the international trading environment changes, the system must be reprogrammed to respond.

The Automated Manifest System (AMS) has a very minor impact on brokers. The Customs Information Exchange (CIE) is strictly internal to Customs and will not have any impact on brokers. There are no plans at this time to include an automated passenger system in ACS.

COMMENTS TO TESTIMONY OF JOSEPH L. MAYER PRESIDENT OF THE COPPER AND BRASS FABRICATORS COUNCIL, INC.

ANTIDUMPING AND COUNTERVAILING DUTY

Comment: The agencies responsible for implementing the antidumping and countervailing duty statutes cannot say what duties are being paid and do not actively seek to root out fraudulent circumvention of unfair trade orders to insure its prevention.

Response: The Customs Service recognizes that its Blue-Line Report of Antidumping and Countervailing Duties Collected is incomplete and is actively working to correct the problem. Updated reporting instructions have been issued to field personnel; Blue-Lining instructions are now included in antidumping and countervailing duty issuances prepared by the Department of Commerce; and keying instructions have been revised and updated for the contract personnel who input the data used to prepare the report.

More importantly, because the present system is one of manual collection, and Customs Headquarters does not have the manpower to verify and correct the data submitted (as the Bureau of the Census does for the data we provide to them), we are replacing it with an automated system which should be on-line in late summer. The new system, known as the ACS Antidumping and Countervailing Duty Module, will identify entries of possible AD/CVD merchandise, it will verify the AD/CVD data that is provided for correctness, and it will store the data for reporting requirements.

We are unclear as to the meaning of Mr. Mayer's second comment that Customs does not actively seek to root out fraudulent circumvention of unfair trade orders. We have investigated allegations of misclassification of brass sheet and strip to avoid antidumping duties with negative results. We are investigating the possible reimbursement of antidumping duties to the U.S. subsidiary by the foreign parent company. We recognize that we have not tested in our laboratories as many imported samples as the Council may desire. However, laboratory tests are discretionary on the part of import specialists. Those to whom we have spoken do not consider misclassification a problem. Mr. Mayer's complaint may be that we do not commit the level of resources to enforcement of unfair trade programs that we do to other programs. While technically this is a correct statement, Customs believes that the current level of dedicated resources is adequate to enforce our unfair trade laws.

COMMENTS TO TESTIMONY OF THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

19 U.S.C. 1595a(c) SEIZURE AUTHORITY

Comment: Commercial seizures under Section 1595(c) are depriving honest U.S. businesses of procedural safeguards extended to others, as Customs seizes and issues penalty notices when simple detention or no detention is sufficient. AAEI requests that no funds from the FY 1990 budget be allocated to enforce Section 1595a(c) or in the alternative, that only "prohibited" commercial goods can be subject to the seizure authority.

Response: Since Section 1595a(c) provides for the seizure of "any" merchandise under the circumstances proscribed therein, it remains Customs position that the statute authorizes seizures in cases involving commercial violations. Congress expressly stated in the legislative history that "it is the Committee's intention, however, that the provision would allow seizure and forfeiture in those cases where merchandise has been imported contrary to laws other than section 592 even if the importation is also a violation of section 592." To ensure that seizure authority under this section is exercised responsibly and effectively, Customs follows specific internal guidelines, which limit the use of section 1595a(c) to violations involving restricted or prohibited merchandise.

To limit Customs seizure authority to prohibited merchandise would serve no purpose because the term "prohibited" goods includes limited types of merchandise such as contaminated milk, pornography, drugs and similar contraband articles subject to forfeiture under other statutes. The vast majority of goods which are imported in violation of statute are restricted but not prohibited, e.g., merchandise in violation of quota/visa provisions.

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ATTITUDE OF CUSTOMS

Comment: Unfortunately, all too often the attitude of the U.S. Customs Service, particularly from Headquarters to the field, conveys an assumption that importers, like drug smugglers, are "the enemy", who do not necessarily deserve due process, who do not deserve to be treated the same as other U.S. businesses. This attitude has lead to an unhealthy relationship between Customs and legitimate businesses. This relationship can best be highlighted by our members' hesitancy to complain publicly about Customs or to complain directly to the Service, for fear of retaliation by Customs in the form of increased, unwarranted inspections resulting in delays and greatly increased costs. While the oversight of this Committee and others has increased Customs cooperation with the trade community, much remains to be done.

Response: Since February of 1983, Customs has focused its attention on, not only drug enforcement, but also an equally critical area --- that of protecting the American marketplace from illegal trade practices -COMMERCIAL FRAUD.

Commercial fraud affects both importers and domestic manufacturers alike. It gives those who break the law an unfair advantage over legitimate importers and manufacturers who, as a result, are often forced out of business.

The commercial fraud program that uncovers fraudulent schemes is part of the overall Customs enforcement effort. It is supported by the Commercial Fraud Enforcement Center in Headquarters. This Center supports field fraud teams that investigate all forms of commercial fraud throughout the country. These teams blend the expertise of import specialists, inspectors, special agents, intelligence analysts, and laboratory technicians into fraud detection units. With the cooperation of importers and American industries, Customs enforcement efforts in commercial fraud have helped to better ensure a fair and competitive marketplace in the United States.

In assisting in the protection of the rights of American industries and the concerns of American consumers, Customs takes extreme precautions to ensure that its intervention does not hinder the smooth flow of trade. Owners of trademarks and copyrights are not only cooperative, but very appreciative of the measures taken by Customs to protect their rights.

The Commercial Fraud Enforcement Center is strongly committed to enforcement in the protection of intellectual property rights, as well as the detection and investigation of all other areas of commercial fraud, primarily steel, electronics, and textiles. All enforcement programs and projects of the entire U.S. Customs Service are geared to the protection of American industries. Special operations and blitzes concentrate on specific areas of potential fraudulent activity within an industry, not on an industry as a whole.

The creation of barriers to international trade is not the policy of Customs in combatting commercial fraud. Customs has been known as "Protectors of Independence" since 1789 and remains as such today.

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515
SUBCOMMITTEE ON TRADE

March 23, 1989

Mr. William von Raab
Commissioner
U.S. Customs Service
1301 Constitution Avenue, NW
Washington, D.C. 20229

Dear Commissioner von Raab:

Thank you for appearing before the Trade Subcommittee yesterday to present the U.S. Customs Service's proposal for the FY 1990 budget. I appreciated hearing your testimony about Customs' recent efforts and proposed initiatives. However, distressing charges and complaints were lodged by other witnesses about Custom's performance. Due to my role on both the Trade and Oversight Subcommittees, I have been in an unique position to observe your operations and hear the concerns of affected qroups in the trade community.

I write at this time to ask for your response to a qroup of additional questions that were not asked at the hearing. Chairman Gibbons has indicated that your responses to follow-up questions from Committee Members will be included in the final hearing record. In light of this, please have your completed responses to the following questions forwarded to me by April 14, 1989.

Antidumping and Countervailing Duty Enforcement

1. (a) How many full-time staff does the Customs Service have devoted to the detection of attempts to fraudulently circumvent antidumping and countervailing duties? (b) Please provide a breakdown of this figure in terms of how many of these employees are at Customs headquarters versus in the field.

2. (a) What is the Commercial Fraud Investigations Center? (b) What is its role in enforcing antidumping and countervailing duties? (c) How many Customs personnel are involved in the Commercial Fraud Investigations Center? (d) Please provide a breakdown of the specific responsibilities of the Customs staff devoted to this Center.

3. (a) How many cases involving fraudulent attempts to circumvent antidumping and countervailing duties were investigated by Customs nationwide in the last complete fiscal or calendar year, depending on how you compile such data? (b) What percentage (roughly) of these antidumping and countervailing duty fraud cases were the result of industry or field staff tips or leads, versus how many were initiated by the Center staff? (c) How many investigations were initiated and pursued specifically by the Center staff?

4. What are the specific methods used by Customs to anticipate (a) transshipment, (b) misclassification, or (c) under- or over-valuation, to avoid antidumping or countervailing duties?

5. I understand that you are developing a model to try and anticipate potential transshipment threats. (a) Please describe specifically how the model would accomplish this purpose. (b) Is this presently operational? (c) If not, when might we expect it to be?

Funding Levels

6. You propose a FY '90 funding level for Salaries and Expenses ($1,021,490,000) that is over $12 million **below** the FY 89 appropriated level ($1,033,911,000) and $38 million **below** this Committee's FY 89 authorization of appropriations ($1,059,757,000). You provide a limited explanation in your budget submission. Please provide a complete rationale for this net decrease, including additional details to support your printed budget submission on projected (a) productivity savings, (b) A-76 savings, (c) FTE shortfall, and (d) absorption of the FY '90 pay raise.

7. Specifically, in the area of Commercial Operations Salaries and Expenses, Customs proposes a **net decrease** of over $18 million and 454 FTE. (a) Provide a detailed justification for these reductions. (b) Provide a detailed breakdown by job series (e.g., import specialists, inspectors, etc.) for the net FTE decrease.

8. For the Tactical Interdiction program, Customs proposes a **cut** of almost $1 million and 14 FTE from air and sea interdiction units. No rationale was provided for this reduction in your budget submission. Explain the reason behind this cut.

9. Your proposed budget asks for an **additional** 396 FTE and $21 million for the Containerized Cargo Examination Program. (a) What is your rationale for increasing this program? (b) Provide a summary of cocaine seizures (number of seizures and amounts) for FY '88 and FY '89 to date for each Customs district attributable to this program.

10. The 1988 Drug Bill authorized appropriations for an additional $4.1 million in advanced X-ray and other technology research for cargo container exams. No additional funds were appropriated in FY '89 for this purpose. Yet in your budget submission you claim that Customs is expanding your efforts in this area. How could this be the case?

Drug Interdiction

11. Serious questions have been raised about the effectiveness of the air and marine interdiction programs. (a) A recent NBC news special report was highly critical of the aerostat program in the southwest. (b) The new P-3 AEW radar aircraft, at a cost of approx. $30 million a copy, was involved in only two seizures over a six month period in 1988. (c) Another recent press report claims that drug seizures in the Houston area fell by 35% between 1986 and 1988, even after the installation of a $5 million marine radar center. Please provide your explanation for the results reported in (a), (b) and (c). (d) Given these types of reports, how can we justify and assess the return on this Committees's investment in these assets?

1988 Drug Bill Regulations

12. Customs was required to issue regulations to create expedited procedures for seizures involving "personal use" amounts of drugs within 90 days after the enactment of the Drug Bill. The Members of this Committee, as you well know, worked long and hard on this issue. (a) Why are these regulations late? (b) When will they be issued (specific date)?

13. The import community has reported numerous problems with inconsistent classification decisions from Customs between different ports. You have initiated a 30 day binding ruling procedure to ensure uniformity of import classification, but I understand that it only applies to new (first time and subsequent) importation of products--it does not apply to products that have been regularly imported in the past. (a) Please explain the rationale for the limitation on this program.

Congress, in the 1988 Drug Bill, gave Customs a statutory requirement to issue regulations for a petition process to ensure both uniformity of classification and uniformity of enforcement. I understand that you have done so. (b) How do the Drug Bill regulations differ from your self-initiated uniformity procedure? (c) Is the enforcement threat uniform among ports and districts? (d) Is meeting the enforcement demand of differing threat levels incompatible with uniform enforcement practices?

14. Customs was also required by the Drug Bill to issue standards of "due diligence" that common carriers are to enforce to prevent drug-related seizures. However, in the new regs. Customs does not define who qualifies as a common carrier, and the regulations would require carriers to investigate, among other things, whether employees "have a standard of living which is inconsistent with the salary being paid by the carrier" or whether there is "adequate lighting in work areas and storage facilities". (a) Why is an employer expected to police his workers in this way? (b) Is this feasible? (c) Why is "lighting" a factor in considering due diligence? (d) Will revoke the common carrier exemption simply because a carrier has bad lighting?

In addition to the numbered questions above, Congressman Thomas has requested that I forward to you the attached letter from the California Farm Bureau. Please describe Custom's position on the country of origin labeling issue described in the letter, and include your response with your overall responses to the above.

Please contact Christopher Smith, Ways and Means Minority Staff, at 225-4021 with any questions you may have regarding this request. Thank you for your complete and timely response to these questions.

Sincerely,

Dick

Dick Schulze
Member of Congress

DS:cskh

enclosure

Questions for the Record from Congressman Richard Schulze

ANTIDUMPING & COUNTERVAILING FULL-TIME STAFFING

Question: How many full-time staff does the Customs Service have devoted to the detection of attempts to fraudulently circumvent antidumping and countervailing duties?

Answer: The Customs Service presently has no full-time staff devoted to the detection of attempts to fraudulently circumvent antidumping and countervailing duties. The Customs Service does, however, have import specialists, inspectors, agents, and other disciplines periodically committed to antidumping and countervailing duty enforcement.

Question: Please provide a breakdown of this figure in terms of how many of these employees are at Customs Headquarters versus in the field.

Answer: Customs Headquarters has a team of 4 (2 agents, 1 import specialist, 1 analyst) committed part-time to antidumping and countervailing duty enforcement. In addition, other members of the Customs Fraud Enforcement Center are periodically involved in antidumping and countervailing duty enforcement. Other Headquarters personnel and field personnel are also involved in antidumping and countervailing duty enforcement as required in the performance of their normal job responsibilities.

ANTIDUMPING AND COUNTERVAILING DUTY ENFORCEMENT

Question: What is the Commercial Fraud Investigations Center?

Answer: The Commercial Fraud Investigations Center is now known as the Commercial Fraud Enforcement Center. The Commercial Fraud Enforcement Center (CFEC) is a division within the Office of Commercial Fraud Enforcement, Office of Enforcement. The CFEC is multidisciplined staffed by personnel from the Office of Commercial Operations and the Office of Enforcement, together with personnel from other disciplines as required.

Question: What is its role in enforcing antidumping and countervailing duties?

Answer: The CFEC monitors investigations conducted by the Department of Commerce and other government agencies in areas which impact upon Customs responsibilities (e.g. antidumping and countervailing duty investigations involving false invoicing, rebate schemes, etc.)

The CFEC also monitors and coordinates all Office of Enforcement investigations involving allegations of antidumping and countervailing duty order circumvention.

Question: How many Customs personnel are involved in the Commercial Fraud Enforcement Center?

Answer: The staffing of the Commercial Fraud Enforcement Center (CFEC) is as follows:

Director - 1

Assistant Director - 1

Field Operations/ISET Team:

OE Field Unit -4

ISET Field Unit -2

Textile Team - 2

Steel and Special Interest Commodities Team - 3

Trademark/Copyright/Patent (Intellectual Property Rights), Foreign Assets Control, Foreign Trade Zones, Antidumping/Countervailing Duties, and Drawback Team - 4

Clerical - 2

Question: Please provide a breakdown of the specific responsibilities of the Customs staff devoted to this Center (CFEC).

Answer: The specific responsibilities of the CFEC are listed below:

Participates in the identification of new commercial fraud investigative and enforcement program areas.

Monitors commercial fraud operational activities and existing investigative programs.

Coordinates non-investigative support utilized in major fraud cases.

Plans and conducts orientation programs for Customs managers, as well as for investigative and non-investigative personnel.

Coordinates commercial fraud case activity between foreign and domestic field offices.

Reviews proposals for undercover operations pertaining to particular case categories and makes recommendations to management regarding these operations; thereafter, monitors activities of approved undercover operations.

Serves as advisor to field offices requiring consultation with personnel possessing expertise in specific commodities associated with identified trade fraud program areas.

Monitors investigations conducted by the Department of Commerce and other government agencies in areas which impact upon Customs responsibilities (e.g. antidumping and countervailing duty investigations involving false invoicing, rebate schemes, etc.).

Tracks activities of international organizations to assess their impact on Office of Commercial Fraud Enforcement activities.

Advises other Customs elements of fraud programs and fraud threat assessments.

Ensures that all information developed within the Office of Commercial Fraud Enforcement meets the Automated Commercial System (ACS) cargo selectivity criteria and is furnished to the Operational Analysis Staff (OAS).

Participates in the formulation, implementation, and analysis of commercial fraud special operations relating to the circumvention of trade laws (e.g., Countervailing Duties/Anti-Dumping Duties, Voluntary Restraint Agreements, Admissibility, Drawback, Product Safety, Bilateral Textile Agreements, Classification and Value, Marking, Copyright/Trademark/Patent [Intellectual Property Rights]).

Coordinates and supports import specialist enforcement activities.

Provides operational guidelines for ISET activities and monitors and analyses ISET operations and reports.

Serves as liaison with National Import Specialists and the New York Operational Analysis Staff (OAS) to develop Automated Commercial System (ACS) selectivity criteria.

Serves as liaison between the Office of Commercial Fraud Enforcement and the Office of Trade Operations.

Question: How many cases involving fraudulent attempts to circumvent antidumping and countervailing duties were investigated by Customs nationwide in the last complete fiscal or calendar year, depending on how you compile such data?

Answer: Forty for (44) cases were investigated by the Office of Enforcement in the past year. These 44 investigations were conducted in 82 offices.

Question: What percentage (roughly) of these antidumping and countervailing duty fraud cases were the result of industry of field staff tips or leads, versus how many were initiated by the Center staff?

Answer: Office of Enforcement statistical records indicate that the investigations were initiated by the following:

Referred by Commercial Operations	17
Referred by Inspection and Control	5
Initiated within Office of Enforcement	21
Referred by other Customs officers	1

The Office of Enforcement and the Commercial Fraud Enforcement Center does not maintain records which would indicate with more specificity the source of the investigations. However, we are able to estimate that 55 percent of the investigations were initiated as a result of information provided to field offices by the CFEC. This information, for the most part, was provided to the CFEC by industry sources. The CFEC has initiated separate projects or programs designed to detect violations or resolve allegations. Industry sources have provided general information concerning violations and have also provided specific information identifying specific targets or violators.

Of the 44 investigations described above, 24 investigations involved commodities which were targeted by the CFEC. The CFEC either has an ongoing program (e.g. steel), or has initiated projects in six commodity specific areas where countervailing duty or dumping orders have been issued.

Question: How many investigations were initiated and pursued specifically by the Center staff?

Answer: The CFEC does not initiate or conduct investigations.

METHODS USED TO DETERMINE AVOIDANCE OF DUTIES

Question: What are the specific methods used by Customs to anticipate (a) transshipment, (b) misclassification, or (c) under- or over-valuation, to avoid antidumping or countervailing duties?

Answer: Customs provides policy planning and resource allocation to meet changing circumstances related to technology transfer, neutrality violations, counter-terrorism, commercial fraud, and economic sanctions and embargoes as well as direct support to national fraud programs and operations. Specific import patterns of targeted countries or commodities are identified and analyzed at the macro level.

The growth and development of the Customs Automated Commercial System (ACS) has resulted in a tremendous data base that transcends the considerations of a processing system. Today, ACS is also recognized for its great research capability. The Cargo Selectivity System within ACS is a principal enforcement tool. The database of cargo selectivity criteria is established by National Import Specialists, national and local intelligence units, the Operational Analysis Staff (OAS), and local enforcement disciplines (import specialists, inspectors, agents, etc.). Cargo Selectivity creates a history of merchandise examinations and the results of these examinations. This history is invaluable for enforcement concerns and criteria file revisions.

The Antidumping/Countervailing Duty module within ACS is targeted to go on-line in June 1989. Testing on the module is now being conducted. This module will establish edits within our Automated Commercial System (ACS) for the proper coding of Antidumping and Countervailing Duty entries to ensure the required cash deposit and suspension of liquidation.

TECS II (Treasury Enforcement Communications System II) is an automated enforcement and inspection support system unit to support Customs, Treasury, and other federal agency users. TECS II is a vast database of information on subjects of enforcement interest with associated automated functions for creating, maintaining, and retrieving information. Customs use of TECS II includes the linking and manipulation of information for analytical and investigative purposes.

DESCRIPTION OF TRANSSHIPMENT MODEL

Question: I understand that you are developing a model to try and anticipate potential transshipment threats. Please describe specifically how the model would accomplish this purpose.

Answer: A statistical model has been developed to assist the U.S. Customs Service in identifying possible transshipment violations of individual antidumping (AD) and countervailing duty (CVD) orders before such violations can cause additional material injury to U.S. producers.

As a concept test, a commodity whose transshipment history had been verified was chosen for analysis. If the transshipment history of the commodity confirmed the information derived from applying the model, then the model could be considered valid. The model includes the following elements:

- Acquisition of import statistics for the specified product(s) and construction of statistical tables and graphs for analyses of imports for the specified product(s).

- Analysis of seasonality, market trends, industry trends, and outside influences for the specified product(s) based on the statistical tables and graphs, as well as on information gathered from other sources.

- Assessment of the probability of transshipments in violation of AD or CVD orders based on the above analyses.

Question: Is this presently operational?

Answer: No.

Question: If not, when might we expect it to be?

Answer: The model will be applied to a more complex situation than was possible initially following completion of the case study concept test. This is necessary in order fully to test the model. The model should be operational when this process is complete, sometime next year.

BUDGET REDUCTION PROPOSALS

Question: You propose a FY 1990 funding level for Salaries and Expenses ($1,021,490,000) that is over $12 million below the FY 1989 appropriated level ($1,033,911,000) and $38 million below this Committee's FY 1989 authorization of appropriations ($1,059,757,000). You provide a limited explanation in your budget submission. Please provide a complete rationale for the net decrease, including additional details to support your printed budget submission on projected (a) productivity savings, (b) A-76 savings, (c) FTE shortfall, and (d) absorption of the FY 1990 pay raise.

Answer: The President's budget submission intends to meet the $100 billion deficit ceiling imposed by the Gramm-Rudman-Hollings process without significant tax increases. Customs drug interdiction program is maintained at the FY 1989 level.

(a) Productivity Savings are expected to total $5.6 million and 140 FTE, primarily in the areas of Inspection and Control and Tariff and Trade support. Automated interfaces with the trade from manual procedures. Expanded Automated Manifest System (AMS) participation by air and sea carriers will allow savings of electronic transmission of manifest data and automated notification of release of cargo will reduce clerical workloads. Increased levels of participation in the Automated Broker Interface and AMS will help Customs to meet the demands resulting from increases in complexity and volume of imports.

(b) A-76 Savings are expected to total $1.1 million and 129 FTE. The U.S. Customs Service is presently studying the feasibility of contracting out portions of Inspection and Control and Regulatory Audit. The potential savings was a figure calculated by OMB, based on prior Governmentwide savings in the A-76 area.

(c) The expected FTE shortfall of $7.7 million and 127 FTE resulted from an OMB analysis of FY 1988 actual FTE costs. OMB used this data, inflated for pay raises in FY 1989 and FY 1990, to determine that Customs could not fully fund the FTE appropriated in FY 1989 and withdrew the FTE's and associated funding.

(d) The absorption to offset the FY 1990 pay raise is in accordance with the Treasury Department policy that agencies absorb three quarters of the pay raise.

(e) Transfers to and from other agencies result in a net decrease of $19.6 million and 317 FTE. This includes the transfer of $14.5 million and 226 FTE to the Department of Justice for conduct of the Organized Crime Drug Enforcement Program and the transfer of $5.6 million and 91 FTE to the Department of the Treasury for the Office of the Inspector General. These are offset by the transfer of $.5 million from the Department of State for the Foreign Affairs Administrative Support Program.

Question: Specifically, in the area of Commercial Operations Salaries and Expenses, Customs proposes a net decrease of over $18 million and 454 FTE. (a) Provide a detailed justification for these reductions. (b) Provide a detailed breakdown by job series (e.g., import specialists, inspectors, etc.) for the net FTE decrease.

Answer: (a) The net decrease is composed of non-recurring costs totalling $28.3 million and 396 FTE and transfers of $3.1 million and 58 FTE offset by an increase of $12.7 million to maintain current levels.

Non-recurring costs include $10 million in ACS one-time costs for equipment and software. Also included in this category are several Administration deficit reduction proposals including: anticipated productivity savings totalling $5.6 million and 140 FTE, anticipated A-76 Savings totalling $1.1 million and 129 FTE, the expected FTE shortfall of $7.7 million and 127 FTE, and the absorption to offset the January 1989 pay raise of $6.3 million.

These reductions will be met without reducing Customs drug interdiction mission. Automated interfaces with the trade community play an important role in relieving Customs personnel from manual procedures. Expanded Automated Manifest System (AMS) participation by air and sea carriers will allow for savings of Inspection and Control support personnel resources. The

electronic transmission of manifest data and automated notification of release of cargo will reduce the clerical workload. The Automated Commercial System (ACS) has also had a great effect on entry units which are responsible for the control of documents and information used in every step of the entry process, from initial presentation through payment of duties. The system has relieved personnel of many routine tasks, offsetting to some degree the dramatic increases in volume. Increased levels of participation in the Automated Broker Interface (ABI) and AMS will help Customs to meet the demands resulting from increases in complexity and volume of imports.

(b) At the time, the specific positions have not been identified. Reductions are expected to come from support areas of Tariff and Trade, commercial processing areas of Inspection and Control, and Regulatory Audit. The Customs Service has been able to process a commercial processing workload which for years has been continually increasing in size and complexity without corresponding increases in resources, largely due to the agency's movement towards a "paperless" environment. Obviously, this is not the solution to all problems. However, in this time of tight budgets, we have to assign our resources to the most pressing needs. At this time the specific effect on commercial activities has not been determined.

Question: For the Tactical Interdiction program, Customs proposes a cut of almost $1 million and 14 FTE from air and sea interdiction units. No rationale was provided for this reduction in your budget submission.

Answer: This reduction is a prorated share of the transfer of Customs resources to the Treasury Department for the Office of the Inspector General. These transfers from across all Customs programs, a total of $5,642,000, are presented on line C. 3. of the table on Salaries and Expenses blue page 5 of the 1990 Congressional Budget Submission.

CONTAINER ENFORCEMENT

Question: Your proposed budget asks for an additional 396 FTE and $21 million for the Containerized Cargo Examination Program.
(a) What is your rationale for increasing this program?
(b) Provide a summary of cocaine seizures (number of seizures and amounts) for FY '88 and FY '89 to date for each Customs district attributable to this program?

Answer: In FY 1990 the Office of Inspection and Control will use the additional positions to augment our container effort. These personnel will be placed in those locations that have been identified as being the highest risk for large load interdiction of cocaine. The positions will be used to support our container enforcement efforts in terms of targeting and container

examinations. For each position added in the FY 1990 budget for cargo examination, we estimate that 137 additional containers will be examined annually. Our overall strategy is to raise the level of examinations on containerized cargo to a point where we will have a true deterrent effect.

The effort to identify and examine suspect containers is a national initiative. All districts which receive high risk cargo are active in the program. Detailed below is a list of the locations where (and the amounts of) major cocaine seizures (over 500 lbs.). Were made in FY '88 and FY '89 to date in containers and cargo.

Significant Seizures-Fiscal Year 1988

DATE	LOCATION	AMOUNT
10/13/87	New York	1,150 lbs.
11/17/87	Pt. Everglades	6,237 lbs.
11/18/87	Pt. Everglades	2,462 lbs.
03/09/88	Miami	500 lbs.
04/13/88	Pt. Everglades	2,600 lbs.
04/28/88	Tampa	9,240 lbs.
05/03/88	Miami	2,100 lbs.
05/20/88	Philadelphia	1,053 lbs.
06/29/88	Newark	4,979 lbs,
08/29/88	Hidalgo	2,735 lbs.
09/07/88	Philadelphia	2,350 lbs.
09/26/88	Miami	972 lbs.
09/26/88	Otay Mesa	1,600 lbs.

Significant Seizures-Fiscal Year 1989 (to date).

DATE	LOCATION	AMOUNT
11/11/88	New Orleans	1,424 lbs.
12/09/88	Miami	572 lbs.
12/16/88	Pt. Everglades	2,197 lbs.

TECHNOLOGY RESEARCH FOR CARGO CONTAINER EXAMINATION

Question: The 1988 Drug Bill authorized appropriations for an additional $4.1 million in advanced X-ray and other technology research for cargo container exams. No additional funds were appropriated in FY '89 for this purpose. Yet in your budget submission you claim that Customs is expanding your efforts in this area. How could this be the case?

Answer: Customs has funds, other than this $4.1 million, that have been appropriated for research. Since cargo containers have been identified as a conveyance ideally suited for drug smuggling, and our experience indicates that their use is a major threat, it is appropriate that available research funds be allocated to finding ways to combat the use of cargo containers as smuggling vehicles. Accordingly, based on the interest resulting from the $4.1 million authorization, Customs has solicited proposals for new techniques and technologies that will assist in detecting narcotics in cargo containers. Subject to the availability of funds, the most promising will be funded through the proof of concept stage using either Customs appropriated R&D funds, or with other funds appropriated by Congress. To that end, Customs has used internal funds to organize and sponsor a symposium to make the public and private research communities aware of the cargo container problem and has solicited their assistance in providing technology to solve it.

DRUG INTERDICTION

Question: Serious questions have been raised about the effectiveness of the air and marine interdiction programs. (a) A recent NBC news special report was highly critical of the aerostat program in the southwest.

Answer: The key to air interdiction effectiveness is the detection of low-flying aircraft crossing the U.S.-Mexican border. Of the planned six aerostat radar network, only the Ft. Huachuca site has been operational 24-hours-a-day since August 1988. The adjacent Deming, New Mexico, site has just completed acceptance testing. The remaining four sites are in various stages of construction with the final site deployment at Rio Grande City, Texas, scheduled for Final Operating Capability (FOC) in January 1990.

With each additional aerostat deployment, substantial segments of the previously unprotected U.S. border will be denied to air smugglers, thus forcing them to divert from their currently safe air routes to longer, costlier and more dangerous routes making them more susceptible to detection, exists indicating shifts in the air smugglers tactics to avoid the Ft. Huachuca aerostat. Land seizures have substantially increased all along the Southwest Border. This indicates a shift to aircraft landing in Northern Mexico and drug cargos being transshipped over land routes to distribution centers in the United States.

We believe it is premature to criticize a detection system largely not in place and we would point out that where it is in place (SE, Florida and Ft. Huachuca), it is denying air smugglers undetected access to those specific border areas.

Question: (b) The new P-3 AEW radar aircraft, at a cost of approximately $30 million a copy, was involved in only two seizures over a six month period in 1988.

Answer: During that same 6 month period, the following events had a negative effect on patrol availability: 4 weeks for an operational assessment; transition training of 23 pilots and 7 flight engineers; initial training of 24 Detection Systems Specialists; installation of secure radios; and maintenance learning curve.

Since January 1, 1989, the AEW has flown 80 times for a total of 464 hours and has participated in eight law enforcement actions, those actions have netted: Seizure of 16,700 lbs. of marijuana (total), 1 aircraft and 2 vehicles, and 2 arrests; assisted USCG on a motor vessel seizure; and developed additional intelligence on smuggling airstrips and routes in and through Haiti, Bahamas, Jamaica, Puerto Rico and Colombia.

Also, there is the unquantifiable deterrent value of the AEW while operating from forward bases because of increased visibility.

Question: (c) Another recent press report claims that drug seizures in the Houston area fell by 35% between 1986 and 1988, even after the installation of a $5 million marine radar center.

Answer: The response to this question is in two parts.

A. Over the past two years, both the office of the Special-Agent-in-Charge and the office of Inspection and Control in Houston have earned the reputation of being extremely diligent in their respective investigative and inspectional duties, to the extent that the importing community has complained of delays in the processing of entries. This diligence is causing many narcotics importers to go elsewhere. Recently confidential informants have told us some traffickers will no longer come to Houston to pick up their drug shipments because it has become "too hot".

B. Prior to 1986, many seizures credited to the Customs Service in the Houston area were the result of support provided to state and local enforcement agencies involved in what was later determined to be domestic trafficking investigations. As this routine assistance was discontinued we have experienced an associated drop in seizure statistics.

Question: (d) Given these types of reports, how can we justify and assess the return on this Committees' investment in these assets?

Answer: The Blue Fire Operations Center (BFOC) in Houston was never intended to be a "stand alone" interdiction asset. It successfully coordinates federal, state and local interdiction

activities through its unique computerized detection and tracking system, Gulf Coast radar network, Civil Air Patrol marine surveillance missions, and on-sight intelligence capabilities.

BFOC was put into Houston at a time when great pressure was being put on South Florida marine smugglers and these smugglers were looking for a place to relocate. The existence of BFOC and its associated interdiction assets has helped prevent the Texas Coast from experiencing the flood of maritime narcotics smugglers once experienced by South Florida.

Initial indications along the Southwest U.S.-Mexico border suggest that the air smuggler has been forced to deliver his cargo to Northern Mexico and warehouse the narcotics for further shipment by land conveyance to U.S. distribution points. This is costlier and adds to the vulnerability of transshipment operations.

These types of results for a program not yet fully in place suggest that the funds being expended are being spent on the right programs. Assuming a continuous process of implementation of the strategy, 1992 is the estimated time period in which to achieve our primary goal. Tradeoffs within the current strategy are inappropriate since it is dependent upon the functioning of all its subsystems.

The Aviation Program has effected results by its air interdiction and support actions for the entire Customs enforcement effort. FY 1988 documented statistics show:

SEIZURES	
Cocaine (lbs.)	56,545
Marijuana (lbs.)	137,490
Aircraft	72
Vehicles	212
Vessels	23
ARRESTS	473

1988 DRUG BILL REGULATIONS

Question: Customs was required to issue regulations to create expedited procedures for seizures involving "personal use" amounts of drugs within 90 days after the enactment of the Drug Bill. The Members of this Committee, as you well know, worked long and hard on this issue. (a) Why are these regulations late? (b) When will they be issued (specific date)?

Answer: The proposed regulations on personal use were issued in 54 FR 14242 on April 10, 1989, along with separate documents by the U.S. Coast Guard and the Department of Justice. The coordination among the agencies, which was required by law, took a longer time than anticipated.

30 DAY BINDING RULING PROCEDURES

Question: The import community has reported numerous problems with inconsistent classification decisions from Customs between different ports. You have initiated a 30 day binding ruling procedure to ensure uniformity of import classification, but I understand that it only applies to new (first time and subsequent) importation of products - it does not apply to products that have been regularly imported in the past. (a) Please explain the rationale for the limitation on this program.

Answer: The 30-day Ruling Program was designed to provide timely "up-front" information to importers. The McKinsey report clearly identified this as a significant business need. It is correct that the program is usually limited to "prospective" transactions. However, in view of the recent implementation of the Harmonized System we have taken a "liberal" approach in defining the current/prospective issue and will continue to do so through the end of June. Normally, on-going transactions are excluded because there are other means by which the importer may gain Headquarters review of the issue. Customs Regulations define an "Internal Advice" procedure whereby either our personnel or the importer may request Headquarters review, if appropriate.

Also, importers of current transactions always have the statutory right to protest the liquidation/action taken by Customs. They may request "Further Review" and, assuming they meet certain presidential criteria, the case will be reviewed by Headquarters.

Last year, Customs processed more than 8.5 million entries. Our programs to insure uniformity are "hierarchical" in nature and assume that not every entry needs to be ruled on by a Customs lawyer or a National Import Specialist. With that volume of entries, there is no other reasonable alternative. However, the system also assumes that the importer is entitled to a reasonable means of review of his dispute. We believe the current system meets those requirements in an efficient and reasonable manner.

DUE DILIGENCE REGULATIONS

Question: Customs was also required by the Drug Bill to issue standards of "due diligence" that common carriers are to enforce to prevent drug-related seizures. However, in the new regulations Customs does not define who qualifies as a common carrier, and the regulations would require carriers to investigate, among other things, whether employees "have a standard of living which is inconsistent with the salary being

paid by the carrier" or whether there is "adequate lighting in work areas and storage facilities". (a) Why is an employer expected to police his workers in this way? (b) Is this feasible? (c) Why is "lighting" a factor in considering due diligence? (d) Will revoke the common carrier exemption simply because a carrier has bad lighting?

Answer: The proposed regulations on the highest degree of care and diligence, published 1/31/89, 54 FR 4835, contains Customs initial views in regard to this area. All public comments, which were due by April 3, 1989, will be given careful consideration by Customs in preparing the final regulatory package.

The Customs Regulations describe a common carrier as a carrier owning or operating a railroad, steamship or other transportation line or route which undertakes to transport goods for all the general public who choose to employ him. The requirements of this amendment to the Customs Regulations relating to the liability of common carriers are made equally applicable to sea and vehicular carriers as well as to air carriers and are applicable with respect to seizures and forfeitures as well as penalties.

Investigating the background of each employee by the carrier to determine whether the employee has engaged in criminal activities, activities relating to narcotics smuggling, or has a standard of living which is inconsistent with the salary being paid by the carrier is important because this will identify those employees who may be high-risk for involvement in illegal activities.

The background checks could be done by either the carrier's security personnel or by an outside company. However, the carrier must certify to Customs that these background checks were completed in order to establish that the carrier had exercised the highest degree of care and diligence in this area.

Maintenance of adequate lighting in work areas and storage facilities will discourage illegal activities that might thrive under inadequate lighting conditions.

The burden of proving that it has exercised the highest degree of care and diligence is on the common carrier. Customs will determine on a case by case basis as to whether or not a common carrier has carried this burden of proof.

Common carriers who failed to establish that they exercised the highest degree of care and diligence to keep narcotics off of their conveyance are liable for the payment of penalties prescribed in 19 U.S.C. 1584.

Mr. GUARINI. Mr. Chairman, I wish I could be here to listen to Mr. Tobias of the National Treasury Employees Union. I want to welcome him, but I have a most urgent meeting that I have to go to. I hope Mr. Tobias will excuse me, you also.

Chairman GIBBONS. All right. Fine.

Mr. GUARINI. Thank you.

Chairman GIBBONS. Mr. Tobias, you are next.

STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

Mr. TOBIAS. Thank you very much, Mr. Chairman.

I am glad Mr. von Raab has gone. Maybe my mental acuity would be under challenge here.

I very much appreciate the opportunity to testify today about the U.S. Customs Service, which I believe continues to be in a state of crisis, for a number of reasons. There is the tide of rising imports; there are new transportation techniques; there is global manufacturing; there are just-in-time delivery schedules, which all enlarge the enormous gap between the workload and the available resources.

Second, we have nearly 4 million containers that are entering this country; 97 percent of them enter without inspection.

Third, only 56 percent of the trade program entries are being processed. All kinds of collection of dumping duties, the rules of origin, or intellectual property rights, 44 percent of them are just being bypassed altogether.

Fourth, formal entries have more than doubled in the last 9 years while commercial operations staff have increased only 13 percent.

Fifth, no more than 50 percent of the heroin, 10 percent of the marijuana, and 20 percent of the cocaine destined for these shores have been seized.

Sixth, we have a very serious problem with the automated collection system, the ACS system that Mr. von Raab previously testified about, saying that this was going to relieve the pressure and decrease the need for the number of people in the U.S. Customs Service.

We placed a very definitive statement about these problems with Chairman Pickle. It is on file. There are all kinds of problems with the system. They continue; they have not been corrected.

Seventh, I believe that Customs is totally unprepared to implement the two major pieces of work of your committee, Mr. Chairman, has completed the United States-Canada Free Trade Agreement and the Omnibus Trade and Competitiveness Act agreement. The legislation requires the Customs Service to prepare a plan to implement the FTA. Our information is that the plan is not ready, and little work has been done as required by the statute.

Mr. Chairman, as you know better than anybody else, 50 percent of the direct cost of manufacturing must be in Canada. Our question is: Who is going to review those entry documents? Who is going to look at the shipments to see if they come from third countries? Because, currently, along that northern border, the Customs Service is seriously understaffed.

Now, the response of the Customs management to these problems has been to ignore the personnel problems and say it can do more with less and not ask this Congress for what it really needs to get the job done. The response has been to attempt to use computers to make up for the lack of personnel, rather than using computers to supplement the skills and abilities of a very dedicated professional staff. The response has been to spend valuable resources of the Customs Service, you might have noticed, developing a questionnaire to be asked of all Customs employees.

It was a 100-question questionnaire, and such questions were asked as: Are you now an officer of or employed in any capacity, or do you work for a political organization? One of the other questions was: Have you ever consulted, been consulted or treated by a psychiatric social worker, psychologist, psychiatrist, therapist or mental health specialist of any kind?

So instead of spending the resources on interdicting drugs or transferring cargo, we have a questionnaire that went out to all Customs employees. Fortunately, a U.S. district court judge said that they could not do that. That did not stop the Customs Service from spending the money in the first instance.

I believe the U.S. Customs Service is a very proud agency with dedicated employees, about to celebrate its 200th anniversary. But it is an agency that has lost its heart.

Mr. Chairman, I ask you to take an extraordinary series of steps in light of these problems. We would ask that you would step up the GAO audits of the Customs Service operations. The Customs Service management needs the close oversight and managerial expertise GAO can provide.

In my full testimony, I suggest three additional areas of inquiry which could be started right now: First, to investigate the loss of funds involved with setting a minimum of $1 million before entries are examined, and bypassing much of what is under $1 million.

Second, investigating the fraud associated with the inadequate investigation of in-bond warehouses.

Third, examine the procedures for collecting the $500 million in unpaid fines and penalties outstanding. That is a lot of money. Five hundred million dollars, if it were all collected, would finance a 1-percent pay increase for all Federal employees.

We would ask, Mr. Chairman, that you would mandate 1,000 additional commercial operation positions at a cost of $53 million. That will return $900 million annually, or $2.7 billion over 3 years. If the U.S. Customs Service is held to last year's level under the administration's flexible freeze, it will lose $37.9 million, 1,000 FTE's, and Treasury will lose $700 million from lost compliance.

We would also ask that you mandate the 396 inspectors suggested by Mr. von Raab to be transferred from cargo to inspectors be continued. We would ask that you insist that the U.S. Customs Service truly value its employees. The employees of the Federal Government, and particularly those in the U.S. Customs Service, which produce revenue are what I believe to be a natural resource. But like all natural resources, they need to be nurtured. They need more training. They need the opportunity to get higher grades. And they need to be treated with a certain amount of dignity. Simple things, like being provided the opportunity to shoot their

weapons in order to qualify. Customs Service recently said that they would not provide the ranges. Even though Customs inspectors are required to carry weapons, they do not get the opportunity to shoot them on ranges provided by the U.S. Customs Service.

As uniformed personnel, it does not seem to us that Customs employees ought to have to pay out of their own pockets to have uniforms. So in the simple things, we would ask for some help, Mr. Chairman.

We are asking the Congress to get more involved because we believe that the Customs leaders have stood in the way of the Customs employees carrying out their mission. We ask the Congress to ensure that Customs will carry out the statutory mission that is defined by Congress. We ask that you continue your active involvement, Mr. Chairman, and help us to make the U.S. Customs Service carry on its tradition of being a proud agency.

Thank you very much.

[The statement of Mr. Tobias follows:]

STATEMENT OF
ROBERT M. TOBIAS
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

Mr. Chairman and Members of the Subcommittee:

I am Robert M. Tobias, National President of the National Treasury Employees Union. NTEU is the exclusive representative of over 144,000 Federal workers, including all employees of the U.S. Customs Service worldwide. I am accompanied by Patrick Smith, NTEU Director of Legislation, and Paul Suplizio, legislative consultant. I appreciate the opportunity to present our Union's views on the U.S. Customs Service authorization for FY 1990.

In four short years, America's debt to foreign countries will be more than a trillion dollars if we continue to run a massive trade deficit. Illegal imports are adding $40 billion a year to our trade bill. Another $25 billion is being lost through piracy of our intellectual property. This drain on our balance of payments will only stop when Customs is strong enough to bring this enormous fraud under control.

Our standard of living and control of our economic destiny are at peril unless we can demonstrate that our trade laws will be enforced. The new U.S.-Canada free trade agreement is an open invitation to third countries to gain access to our markets, because the FTA rules of origin are virtually unenforceable without adequate Inspectors. Import Specialists and regulatory auditors are inherently limited to paper checks, so what comes in has got to be looked at by Inspectors. Existing staff on the northern border are so overworked that it's a delusion to think that the FTA rule of origin can be enforced without significantly increased personnel. Unless Congress acts, Canada will become a way-station for transshipment of third-country products into the U.S. market.

Though enforcement is critical, Customs will never succeed if it envisions itself solely as a policeman. Through a spirit of service, being accessible to the importing community and answering their questions, Customs should promote a high degree of voluntary compliance with our trade laws. This will not happen until there are sufficient numbers of Inspectors and Import Specialists to serve the trade. We again urge this Subcommittee to establish in law a minimum standard of service that will require Customs to come to Congress for additional personnel to strengthen assistance to importers, which today is highly limited. Last year's amendment requiring timeliness and uniformity in issuance of binding rulings is an example of what can be accomplished when Congress acts.

Rising imports, new transportation technologies, global manufacturing, and just-in-time delivery schedules are enlarging the enormous gap between workload and available resources. As we meet, an undermanned Import Specialist team in Los Angeles is backlogged with six stacks of entries, each three feet high. Nearly 4 million containers are entering the country, 97 percent of them without inspection. Formal entries have more than doubled in the past nine years, while commercial operations staff increased only 13 percent. While Customs drug interdiction resources have been strenthened recently, they are still not on a par with the scope of the threat. No more than 50 percent of the heroin, 10 percent of the marijuana, and 20 percent of the cocaine destined for these shores is seized.

Congress must bring Customs workload and resources into better balance by authorizing additional positions for commercial operations and giving the agency the tools needed to attract and retain a young, vigorous, and highly skilled work force. We agree with the Administration's proposal for 396 additional Inspectors to examine containerized shipments; this will strengthen both commercial and narcotics enforcement. However, we disagree that these positions should be funded by cuts in commercial operations. NTEU's alternative budget restores $30.7 million of imprudent cuts made by OMB from the baseline needed to maintain current services (Table 1).

NTEU would go further to add 1,000 commercial operations positions, at a cost of $53 million, for a Customs Revenue Initiative that will return $900 million annually to the Treasury, or $2.7 billion over three years. The basis for this estimate was presented in last year's testimony, and will be furnished separately to the Sub-Committee. We recommend establishing a floor for Customs strength at 17,818 average positions to maintain the revenue initiative during FY 1990-1992. Needless to say, if Customs is held to last year's level under the Administration's flexible freeze, it would lose $37.9 million and 1,000 FTE, and the Treasury would lose more than $700 million from reduced compliance. Customs commercial operations are funded from user fees, so there is no justification for a freeze in this area; rather, user fees should be tapped to process Customs' growing workload. We repeat our longstanding recommendation that user fees be treated as a reimbursement to Customs' appropriation under 19 U.S.C. 1524. Such funds would thus be available, without necessity of further appropriation, to meet the legal mandate that Customs' services be "adequately provided" to the public.

NTEU's revenue initiative is based on the fact that an estimated 70 percent of all formal entries filed with Customs, including a majority of dutiable entries and entries under sensitive trade programs that require special attention, are being bypassed under Customs' "entry summary selectivity" processing system. When it introduced the system last year, Customs established a criterion of $1,000,000 for bypassing entries, a sum which greatly exceeded thresholds of $20,000-$70,000 established by experienced Import Specialists when they were permitted to set bypass criteria locally. Customs employees take strong issue with the million dollar criterion, which they see as an arbitrary means of increasing bypass, with potential loss of millions in Federal revenue. We strongly urge the Subcommittee to ask GAO to investigate the soundness of this criterion and its impact on the level of bypass and Federal revenue.

The professional expertise of its people is Customs' greatest asset. In recent years, that asset has badly eroded due to uncompetitive pay, an obsolete grade structure, and limited opportunities for training and career advancement. Attrition within Customs has increased 25 percent, from losses of 80 a month to 100 a month, and the Service is losing not only experienced hands but some of its

best new recruits. Hiring and retraining replacements is costly and turnover corrodes the expertise needed to do an increasingly technical job. Occupations requiring youth and stamina -- Inspectors and Canine Enforcement Officers -- are not being rejuvenated by attracting and retaining enough top-flight young people.

Congress should take steps now to assure that Customs develops the highly skilled work force needed to enforce a body of increasingly complex trade laws in an increasingly technical environment. This Subcommittee should assist Customs in obtaining direct hire and special pay authority to enable it to compete with the private sector for high-quality recruits. We urge you to work with the other Committees of Congress to achieve independent personnel authority for Customs as soon as possible, so the Service will be directly responsible for setting the pay for and managing its human resources.

We urge the Subcommittee to provide an additional $25 million for training and require Customs to develop a training plan that encompasses technical training and advanced schooling as recognized components of career ladders within the Service. We envision this not only as a means of developing the skills the Service needs, but as a means of making careers attractive by creating opportunities for employees to grow in their jobs. According to the Hudson Institute's Civil Service 2000 report, the skills required for government jobs are advancing and competition for the limited supply of qualified people will intensify in the decade ahead; therefore, the government must invest in training to create the skills it requires. We urge Congress to begin now to improve the funding and emphasis on training in the Service.

Customs Inspectors, Patrol Officers, and Import Specialists are saddled with obsolete grade classifications that fail to recognize the increased technical complexity of Customs work and are contributing to high turnover and declining skill levels in these jobs. Congress should act promptly to raise the journeyman grade for Inspectors and Patrol Officers from GS-9 to GS-11, with appropriate higher grades for positions in these career fields with higher skills and responsibilities. Likewise, the journeyman level for Import Specialists should be upgraded from GS-11 to GS-12 and the grade for team leaders advanced from GS-12 to GS-13. The world has changed from the steamship era when only a few commodities moved in trade. Goods today are highly diverse, entry and release are automated to permit the orderly transit of large volumes of merchandise, and Customs employees must apply sophisticated techniques to discover contraband and identify non-compliant importers. The complexity of customs laws and regulations continues to grow. The reality is Customs presently cannot compete with the private sector for people with the requisite skills, and there is little hope for recruiting and retaining a competent corps of professionals in these occupations unless they are upgraded. We urge the Subcommittee to act in this matter as soon as possible.

It is strongly in the national interest that occupations within Customs that are physically demanding and hazardous should be staffed with a young and vigorous workforce. The job of controlling the nation's borders requires individuals with stamina who are armed and trained to encounter escaped felons, drug smugglers, and terrorists in performing their duties. Customs Inspectors and Canine Enforcement Officers have been stabbed, shot at, run over, and killed in line of duty. They carry weapons for self-protection in making arrests and physically subduing those who resist. They are assigned to isolated locations and must operate alone on night shifts. Experience has shown that the best way to make such careers attractive while rejuvenating the work force is to provide for retirement at age 50 with twenty years of service. NTEU supports legislation introduced by Congressman Al Swift (H.R.1083) and Senator Barbara Mikulski (S.513) to provide 20-year retirement for Customs Inspectors and Canine Enforcement Officers, and we urge the Subcommittee to support this legislation. Our inspector force is greying and only a small percentage of younger inspectors are staying after five years. If we do nothing, the corps of Customs Inspectors will be comprised of young, inexperienced recruits and Inspectors without the requisite stamina for the job. The only solution to maintaining an adequate number of experienced officers and a vigorous work force in these critical occupations is an up-and-out policy after twenty years.

In sum, Congress should pay urgent attention to the ability of Customs to compete for qualified people and sustain a highly skilled work force for the coming decade. The measures we recommend--independent personnel authority, higher entry-level pay, greatly augmented training, up-grading Inspector and Import Specialist positions, and 20-year retirement for Inspectors and Canine Enforcement Officers, are a dramatic departure from the past and will be difficult to achieve. But we believe these steps are essential if the billion dollars we spend on Customs each year is to be effective. We are re-learning every day the truth of the old adage, "you get what you pay for." A competent work force will not just happen. There must be better pay, training, and career opportunities; and we need to get on with the job.

Customs has notified NTEU of its intention to drastically reduce the number of inspectors assigned to passenger preclearance in Canada. Under this plan, staff will be reduced by 55 positions by October 1st, 1989 and by another 59 positions by October 1st, 1990. Since the current staffing level is 147 positions, only 36 inspectors would remain at the six Canadian preclearance sites on October 1st, 1990. The rationale we were given for the proposal was the need to strengthen the Southwest border. NTEU opposes this plan as being contrary to congressional policy and the mandate in Customs User Fee legislation that sevices be adequately provided to the airlines. As is well known, preclearance is funded by user fees, and has a record of contributing efficiently to air travel between our two countries. We have also objected that a long-term commitment was made to inspectors and their families to

relocate themselves to a foreign country in furtherance of the Customs mission. The proposed reassignments will work severe hardship on these families. We strongly urge the Subcommittee to direct Customs to rescind actions already taken in furtherance of this plan, such as prohibiting tour extensions and issuing transfer orders to some inspectors, and to cease implementation at once. We request that the U.S. Customs authorization bill contain specific language to this effect.

Customs operations on the Southwest border need strengthening in both narcotics and commercial operations. Mexico is now a principal conduit for heroin, cocaine, and marijuana. The establishment by many U.S. and some foreign firms of "twin-plants" or maquiladoras in Mexico has vastly increased the scale of commercial truck traffic carrying the products of these plants to the U.S. There are now over 1,300 of these plants which make a valuable contribution to both the U.S. and Mexican economies. Many of the maquiladoras have tight shipping schedules to meet "just-in-time" inventory requirements in the states. They are eager for expedited entry and a smooth flow of traffic through the Customs cargo processing operation. There is no assurance, however, that such shipments are completely free of customs or narcotics violations. Consequently, the maquiladoras' commercial traffic will require enforcement checks and Customs has indicated that it will make such inspections. NTEU strongly opposes the pilot project under which cargo sealed in trucks at Mexican maquiladora plants are allowed to enter this country without inspection. Such a policy is insufficiently protective of U.S. narcotics control and commercial interests. NTEU intends to closely monitor this situation to ensure adequate enforcement as well as expeditious cargo movement for reputable importers.

Controlling our country's borders is an enormous challenge, but for decades this task has been shared by two agencies, Customs and the Immigration and Naturalization Service. The Departments of Agriculture and Health and Human Services also have roles in border inspections, and while the agencies have generally established good working relationships, the system is obviously not as efficient as it could be if a single agency were assigned full responsibility for our borders. Recently, the General Accounting Office reiterated its view that responsibility for conducting primary inspections at our ports of entry be placed in a single agency. We agree, and we support the assignment of this mission to Customs because it is the agency best able to assume this important function and will not disrupt Customs ability to deal with the extensive commercial fraud and narcotics threats.

Moreover, INS is a beleaguered agency which has its hands full controlling the immigrant population within the U.S. A recent management review ordered by the Attorney General uncovered serious backlogs of case adjudications; granting citizenship without required background and fingerprint checks; ineffective safeguards for information, personnel and assets; inaccurate and unreliable data at all organizational levels on immigration reform applicants and fees collected; and granting waivers to hire into INS persons with pending trials for felonies, serious drug use allegations, multiple identities, multiple firearms violations, and employment histories in which they had been fired for incompetence and banned from Federal service.

These considerations add weight to the proposition that the best solution to single-agency border management is to assign this role to the U.S. Customs Service.

Customs continues to contract out essential government functions under the A-76 program. Contract personnel are now serving as data entry clerks at several ports. We support saving the taxpayer's money but we are skeptical of the claimed savings when activities are contracted out. GAO's work in this area bears us out. Much of the savings are due to lower wages and benefits paid by contractors, but the savings evaporate when contractors insist on more money for tasks the government neglected to include in the scope of work. With respect to data entry clerks at ports such as J.F.K., there is no way of assuring the confidentiality of the information processed, or that an individual is not working for a dishonest broker. Our union cannot provide normal assistance to leased employees, nor protect them from verbal abuse or sexual harassment at the job site. The FY 1990 budget requires Customs to achieve savings of 129 staff-years and $1.1 million through contracting out, but we are skeptical of Customs' ability to do so. We urge this Subcommittee to include a provision in the FY 1990 authorization bill requiring Customs to make its A-76 studies and supporting documents available for public review a minimum of 90 days before requesting proposals to contract out an activity. We believe the public should be allowed to see these studies and judge for itself whether the proposed contract is beneficial or not.

Inspection and Control

NTEU continues to be concerned about the adequacy of the audit/inspection approach to enforcement in bonded warehouses and Foreign Trade Zones. When Customs changed from having on-site Inspectors to primary reliance on audits and spot-check inspections, it greatly reduced the number of staff-years for enforcement at these entities. NTEU remains convinced this was a mistake and an invitation to abuse. According to GAO, a Customs official responsible for in-bond operations estimates that about 40 percent of all imported cargo is shipped in-bond (IMTEC 89-4BR). A large quantity of imports destined for the U.S. market likewise passes through Foreign Trade Zones. The Unfair Trade Practices hearings held in 1986 uncovered evidence of abuse. The audit/inspection approach has been in place for five years, and its effectiveness should be evaluated without further delay. We urge the Subcommittee to assign this task to GAO.

At major international airports, Customs introduced four years ago a passenger clearance system known as Red/Green. The theory behind this system, which Customs seems to be touting as the wave of the future, is that by giving passengers the opportunity to self-select either the green lane (no Customs items to declare) or the red lane, passenger facilitation is improved without reducing enforcement. The system is augmented by roving Inspectors who monitor passengers both in primary lanes and baggage areas, and who may designate individuals for immediate clearance or for detailed secondary inspection. For the

Red/Green system to work, there must be adequately staffed primary lanes and an adequately staffed secondary. There must be sufficient numbers of Inspectors in both red and green lanes, and an adequate number of roving Inspectors.

To operate such a system with an insufficient number of Inspectors, an inadequate secondary, a few rovers, and a handful of green lanes where passengers are whisked through with only cursory examination, is simply ineffective enforcement. Customs management is putting passengers on the honor system by inadequate primary and secondary inspection because it is the answer to clearing the terminal before the next wide-body jet comes in. The only solution to adequate facilitation and enforcement is to provide sufficient staff, and utilize an effective inspectional system. The Red/Green system has been tested for five years, and Inspectors are convinced it is not as effective as the citizen bypass, one-stop, or even the two-stop system formerly used. This is because putting all available resources into an adequately staffed primary and secondary to properly screen passengers and identify those for intensive examination, is the right way to do the job.

NTEU has frequently called attention to the deplorable working conditions of Inspectors on the Southwest border. Inspectors must work in primitive facilities enveloped with noxious fumes, and try to accomodate staggering workloads in congested space. NTEU has strongly urged Congress to remedy this situation, and in the FY 1988 Continuing Resolution Congress appropriated to the General Services Administration building fund $28.6 million for capital improvements of U.S./Mexico border facilities. Table 6 provides a list of these projects. Customs and GSA are moving ahead with construction preparations and NTEU intends to monitor events closely to assure that these urgently needed projects are completed without delay.

Inspectional overtime is a critical resource for meeting Customs' growing demands for clearance of passengers and cargo. For nearly a decade, a virtually static inspectional force has had to process a growing number of air travelers and cargo shipments. With its workforce limited by OMB personnel ceilings, Customs inspectional overtime has expanded to fill the gap between workload and resources. The amount of inspectional overtime is driven by the carriers' demand for inspectional services outside the normal duty hours of the port. Customs is reimbursed for the cost of such services from the Customs User Fee Account. Since overtime costs are now borne by all carriers rather than the individual carrier requesting service, we anticipate that demand for overtime services will rise as individual carriers request services that they are no longer billed for.

An Inspector with overtime earnings of $15,000-$20,000 a year works an average of 62 hours a week, 52 weeks a year. A 1981 Customs study of overtime showed that, in addition to a normal 40-hour week, the average Inspector is required to work three of every four Sundays, one Saturday per month, and seven week-day overtime assignments per month. For Inspectors to make themselves

available such long hours, particularly on Sundays and holidays when other citizens are taking the day off, adequate monetary incentive must be provided. The most recent data collected by Customs shows that Inspectors are earning, on average, 2.1 times the regular rate of pay on Sundays and 2.4 times the regular rate on the other days of the week. Customs' study attributes the 2.4 rate of pay to the call-back of Inspectors who have left the worksite. Call-backs frequently occur at night and at irregular hours. The Customs study also showed that the average Inspector works 7 hours on each Sunday assignment, and an average of 8 hours if holidays are included in this figure.

We are convinced that the frequent call-backs, the late-night hours, and the physically demanding nature of inspectional duties justifies the present rate of pay. Moreover, these rates of pay conform with the prevailing overtime rates in the private sector, which normally establishes double time premiums for call-back and night work, and where typical practice is triple time for Sunday overtime and double time and one-half for holiday work. These factors were established in the OPM Premium Pay Study conducted in 1983.

From FY 1977 to FY 1987 the number of air passenger arrivals increased 80 percent while the number of Customs Inspectors increased 29 percent. In the Northeast Region the number of air passenger arrivals increased 50 percent, while the number of Customs Inspectors declined by 28 percent. The current $25,000 cap on overtime earnings has not been changed for five years and many Inspectors at larger airports and the Southwest border are beginning to "cap out" in the fourth quarter of the year. A total of 961 Inspectors were near to exceeding the cap in 1988, compared to 266 in 1985. Because higher-graded, more experienced employees cap out earlier in the year, the Inspectors working overtime are less experienced and less able to handle unusual occurences. For example, on Sunday, September 25, 1988 the Miami inspector staff working overtime included 27 temporaries and 8 trainees out of 53 assigned. This compares to only two such lower-graded personnel assigned on a typical Sunday four months earlier. Many Southwest border ports, such as Port Arthur, El Paso, Houston, Freeport and Corpus Christi are having a difficult time due to the number of Inspectors capping out.

Uniform costs have risen sharply for uniformed Customs officers since 1984, while the uniform allowance has remained unchanged. Some examples from the male uniform price list are:

	Price 1984	Price 1989	% Change
Dress Shirt	12.00	17.30	+44%
Utility Jacket	26.50	37.55	+42%
Utility Trousers	17.50	24.50	+40%
Shirt, Long Sleeve	12.00	17.55	+46%
Mobile Jacket	93.00	134.70	+42%

Uniformed Customs employees are bearing the financial cost of rising clothing prices, and an immediate increase in the uniform allowance is called for. We request the Subcommittee's assistance in remedying this situation as soon as possible.

Because of the rise in violent incidents committed against Customs Inspectors, these officers are now armed for self-protection and expected to maintain weapons qualification. Inspectors are required to carry the standard issue CS-1 Smith & Wesson .357 Magnum at all times,and the option to carry a personal sidearm has been taken away. Customs continues to raise the standard for qualification and has recently raised the qualifying score from 240 to 250--one of the highest, if not the highest--weapons qualification standards in the Federal service. Inspectors must qualify annually, and failure to qualify will result in assignment to non-inspectional duties, which can severely retard an officer's career. Formerly, Inspectors were allowed three practice sessions a year on a firing range rented at Customs' expense. However, recently Customs announced a change in policy and will no longer assume the cost of practice. Instead, Inspectors are to be issued practice rounds and are required to arrange for practice at their own expense. NTEU believes requiring Inspectors to arrange their own practice and bear the expense is unfair, especially in view of the rigorous qualifying standard. The requirement to use the CS-1 instead of a personal sidearm is also unfair, as some Inspectors have been using such personal weapons for years, and particularly, those over age 55 are better able to protect themselves with weapons they are accustomed to. Accordingly, we strongly urge Congress to require Customs to bear the expense of three practice sessions a year to maintain weapons qualification, and to restore the option of allowing Inspectors to qualify with and use a personal sidearm of choice in lieu of the CS-1.

Commercial Operations

The commercial fraud threat projected by Customs for FY 1989 is $14 billion, of which $12 billion consists of illegal entry of counterfeit goods and the remainder consists of goods entering in violation of steel, textile and other trade program requirements. Customs has not officially estimated the volume of illegal merchandise entering undetected due to inadequate inspection, but an internal document estimates such goods amount to $25 billion annually. GAO and our own investigations support the conclusion that much illegal merchandise is getting past Customs. GAO report 86-136, which examined the adequacy of commercial cargo inspections, found that Inspectors generally were not counting quantity or verifying weight when they check shipments, and that most container inspections consisted of cursory tail-gate examinations. The huge workload puts extreme pressure on Inspectors to move shipments expeditiously.

Another GAO report, NSIAD 86-96, found protection of U.S. intellectual property rights through enforcement of trademark and copyright recordations and Section 337 exclusion orders to be inadequate. Nearly 80 percent of the firms who recorded their trademarks and copyrights with Customs, and over 65 percent of the firms who had obtained ITC exclusion orders, said that counterfeit and infringing goods continued to enter the marketplace despite these safeguards. GAO attributed this in part to the fact that only two percent of the shipments entering the country are being physically examined. Enforcement is further exacerbated by inadequate numbers of Import Specialists andthe high rate of entry bypass. According to a recent International Trade Commission study, violations of U.S. intellectual property rights are costing U.S. firms more than $40 billion in lost exports, domestic sales, and royalties. Customs admits that $12 billion in counterfeit imports are entering the U.S. market annually. At present, the burden of intellectual property protection has fallen largely on the private sector. Customs can do a better job because it controls the ports of entry through which counterfeit imports flow. However, Customs has not to our knowledge evaluated the effectiveness of its methods, nor determined the staff required to do an effective job in enforcing the intellectual property protections provided by law. We strongly urge this Subcommittee to require Customs to prepare a 5-year plan to establish an effective level of enforcement, together with the resource requirements needed to implement such plan, and require GAO to evaluate such plan prior to its submission to Congress.

Trade-sensitive entries requiring greater attention by Import Specialists (such as those involving quantitative restraints, collection of dumping duties, or enforcement of other agency requirements, rules of origin, or intellectual property rights) have more than doubled in recent years, and are becoming an increasing proportion of total entries. Between 1982 and 1989, formal entries increased 96 percent, while trade program entries increased 158 percent. Trade program entries today comprise 56 percent of total entries (Table 5). About half of these entries are reviewed at the present time, the remainder being bypassed. Since trade program entries involve sensitive national interests, NTEU believes that Import Specialists should review 100 percent of these entries. We urge the Subcommittee to require Customs, in conjunction with GAO, to prepare a plan to achieve this goal. The plan should include a statement of resource needs and the beneficial results anticipated from strengthened enforcement of sensitive trade programs.

In its budget submission, Customs attributes its increasingly complex workload to a long list of trade agreements, including--"the International Coffee Agreement, EC Pasta Agreement, Tungsten Agreement, Softwood Lumber Agreement with Canada; Voluntary Restraint Agreements with 29 countries for steel and two countries for machine tools; textile visa agreements with 34 countries; import restraint levels on textiles from 43 countries; import restraint levels on various dairy products, steel, chocolate, meat, fish, broomcorn, pasta, and peanuts; trade sanctions on Brazil, EC, and Japan, as well as individual companies like

Toshiba of Japan; and monitoring programs on semiconductors from Japan."

A competent corps of commodity specialists must be highly skilled. Implementation of the Harmonized System, last year's new trade legislation, and the U.S.-Canada Free Trade Area will impose new burdens on Import Specialists. In earlier times, most entry processing could follow a standard format. Today, Import Specialists are confronted with a broad array of rulings, special duties, exclusion orders, restraint agreements, and other agency requirements. Increasingly, rules of origin are expressed in terms of processing costs or value-added, requiring familiarity with cost accounting, translation of exchange rates, and complex numerical computations. Processing GSP, CBI, and Item 807 entries now requires such skills, and the need will increase as global manufacturing and bilateral trade arrangements become more common. Instead of allowing Import Specialist skills to be diluted by working multiple product lines, Customs should promote commodity expertise in a single line and actively support the professional development of its Import Specialists.

Customs has automated entry acceptance through the Automated Broker Interface (ABI). However, once entries are designated for review through the entry summary selectivity module, Import Specialists must work with hard copy in a manual environment. Hence they remain mired in paperwork. Automating simple tasks such as ready access to current and past exchange rates, cost and price information, and past entry summary data would reduce processing times and yield better-informed decisions. If Import Specialists had the ability to review entry data on computer terminals, they could dispense with hard copy except where necessary to verify the authenticity of a certificate, license, visa, or similar document required by regulations. Electronically accessible data on customs regulations and rulings would speed up review and stimulate greater uniformity of decisions. Improved communications between Import Specialists and Inspectors would make examinations more productive and yield better-informed classification and admissibility decisions. Customs needs to place a higher priority on giving Import Specialists the modern tools they need to do their job.

As a result of our proliferating trade laws and the myriads of new products in international trade, Customs is beseiged by requests for advice and assistance from importers. Through visits to importers' premises, line review of entries prior to filing, and answering questions concerning application of trade laws and regulations, Import Specialists can help sustain a high degree of voluntary compliance with the customs laws. But today they remain largely inaccessible, available on the phone or by appointment during restricted hours and after lengthy delays due to their small numbers and large workload. To our knowledge, Customs has never taken stock of the staff-years required to meet the demand for importer assistance. We believe the Subcommittee should direct Customs, in conjunction with GAO, to measure this demand and determine the Import Specialist staff requirement to meet it. In the

meantime, the Subcommittee should direct Customs to employ a reasonable amount--say, 20 percent--of Import Specialist staff years to provide importer assistance.

As a result of the Packwood Amendment enacted last year to assure greater uniformity and speed in issuing binding rulings, Customs has instituted a new program that will improve responsiveness to importers' requests. Customs has also launched a pre-clearance program, a form of line review that has been sorely lacking and will increase assistance to importers. These programs will not succeed unless they are adequately supported with staff resources. Under the binding ruling program, senior import specialists in the field are designated, on a voluntary basis, as Deputy National Import Specialists (DNIS). In this capacity, they prepare binding rulings under the supervision of a National Import Specialist in New York. DNIS are supposed to use 25 percent of their time in this role, but as one put it, "I still have 100 percent of my job to do." These new programs are a step in the right direction, made possible by 640 new positions provided by Congress last year. But Customs still needs more Import Specialists to reduce the rate of bypass and increase their accessibility and assistance to importers.

We request the Subcommittee to initiate a review of Customs' Project 6000, which according to GAO is aimed at collecting about 15,000 unpaid fines and penalties totaling over $500 million (GGD 88-74). If this amount is truly backlogged in the Fines, Penalties, and Forfeitures offices throughout Customs, prompt action should be taken to step up collections. If additional staff are required, they should be provided, for speeding up collections is an additional avenue to obtaining needed revenue to reduce the Federal deficit.

Automated Commercial System

NTEU has from the outset strongly supported automation leading to a more efficient and effective Customs Service. Customs employees must be given modern tools needed to do their jobs. The result will be greater efficiency and a more humane work place. Customs has spent $170 million on a major automation effort, the Automated Commercial System (ACS) since 1983, and plans to spend an additional $150 million on the system over the next five years. What can Customs show for this effort? We believe management made plenty of mistakes, most of which could have been avoided if they had consulted with employees and the trade community.

A fundamental error that Customs management stubbornly persists in is using ACS to scale the workload to the size of the staff. Customs' philosophy is that since there aren't sufficient resources to handle the workload, they'll cut the workload down to size. Scaling back the workload was disguised in jargon like "automation" and "selectivity". But in reality Customs programmed its computers to limit the number of shipments to be inspected and the number of entries to be reviewed to the staff

available, the remainder being bypassed. Customs could and should have adopted a contrary philosophy. It could have determined the minimum number of checks needed to maintain enforcement. And it could have asked Congress for the staff required to do the job.

Because management was determined to use the computer as a tool to facilitate bypass of workload it couldn't handle, thereby avoiding bottlenecks on the docks andscreams from importers, Customs arranged ACS so the computer's decisions would not, for the most part, be overridden. The computer, making its decisions on imperfect or non-existent criteria, drove the work force instead of being a tool for the work force to use. In cargo selectivity, Inspectors were required to perform certain exams of first-time importers and enter the results in the computer. Unable to keep up with the inspections required, many Inspectors falsely reported that they had conducted the exams and found no discrepancies. These points were confirmed by GAO (IMTEC 89-4BR). Likewise, in entry summary selectivity, districts are forbidden to override for more than sixty days the national criterion that bypasses entries valued under $1 million, even if they think there are problems with entries of lesser value.

The rule "garbage-in, garbage-out", applies to these efforts. Customs is a long way from gathering the data needed to formulate adequate selection criteria in either the cargo processing or entry summary areas. GAO has pointed out in two studies (GGD 86-136 and IMTEC 89-4BR) that Customs has retrieved virtually no useful data from inspections it performs that would enable it to profile high-risk shipments. In fact, examination history files now in the computer contain false and inaccurate data.

The Automated Broker Interface (ABI) module is now processing 65 percent of all entries. ABI could have tremendous potential if it were designed to give Import Specialists a tool to review entries and develop bypass criteria. The promulgation of national criteria under entry summary selectivity has nipped in the bud countless promising efforts to develop sound bypass criteria locally. Under ABI Import Specialists have little say in which entries will be reviewed. The bypassed entries, of course, are accepted as entered, which means the classification of the article, its valuation, and determination of its admissibility are on the honor system. The foreign trade statistics of our country are hostage to this honor system because the designers of ACS have not built in adequate checks by Import Specialists.

Mr. Chairman, this completes my testimony. I shall be happy to answer any questions.

TABLE 1

U.S. CUSTOMS SERVICE FY 1990 BUDGET REQUEST AND NTEU RECOMMENDATION
SALARIES AND EXPENSES

(Amounts in Thousands of Dollars)

	FY 90 BUDGET REQUEST		NTEU RECOMMENDED ADDITION		NTEU RECOMMENDED AUTHORIZATION	
	Amount	Average Positions	Amount	Average Positions	Amount	Average Positions
Inspection and Control	118,826	2,115	+650(a)	--	119,476	2,115
Tactical Interdiction	128,640	2,631	+996(a)	--	129,636	2,631
Investigations	147,900	1,687	+724(a)	--	148,624	1,687
Commercial Operations	626,124	9,989	+30,697(a) +53,030(b)	+ 396(a) +1,000(b)	709,851	11,385
Total	1,021,490	16,422	+86,097	+1,396	1,107,587	17,818

(a) These amounts are required to maintain current service levels while adding 396 positions for the containerized cargo enforcement initiative proposed in the Administration's budget. The amounts are determined from p.5 of the congressional budget submission by restoring cuts for automated commercial system, productivity savings, A-76 savings, FTE shortfall, and absorption to offset January 1989 pay raise.

(b) $53 million and 1,000 positions are recommended by NTEU for a Customs revenue initiative commencing in FY 1990 that will return $900 million annually in additional revenue to the Treasury, or $2.7 billion over the next 3 years.

TABLE 2

U.S. CUSTOMS SERVICE
Average Positions
by Category
FY 1978 - 1990

Fiscal Year	Inspectors	Import Specialists	Patrol Officers	Special Agents	Total Customs
1978	4,077	1,207	1,251	600	13,854
1979	4,174	1,236	1,211	577	14,061
1980	4,165	1,219	1,231	604	13,820
1981	4,379	1,165	1,332	597	13,316
1982	3,987	1,081			12,924
1983	4,122	1,027	1,134	701	12,898
1984	4,289	1,042	1,246	932	13,319
1985	4,262	974	1,236	925	13,042
1986	4,305	927	1,072	982	13,059
1987	4,386	966	923	1,166	13,971
1988	4,609	1,000	1,026	1,512	15,294
1989 (AUTH)	5,280	1,185	1,147	1,592	16,739
1990 (ADMIN)	5,618	1,185	1,147	1,428	16,422*

Source: U.S. Customs Service Budgets

*317 positions transferred to Justice and Treasury in a reorganization of Drug and Internal Security Functions

TABLE 3

INSPECTIONS OF CONTAINERIZED SHIPMENTS

FY 1980-FY 1986

	Containerized Shipments (000)	Container Inspections[1]	% Inspected	Fully Unstuffed and Stripped Inspections	%
1980	2,800	192,734	6.8	81,234	2.9
1981	3,100	215,805	7.0		
1982	2,738	186,800	6.8		
1983	2,949	112,843	3.8	21,000	0.9
1984	3,570	93,047	2.6		
1985	3,356	95,000	2.8		
1986	3,482	98,000	2.8		
1987	3,631				

[1]Mainly Tailgate Exams

Source: U.S. Customs Service

TABLE 4

MERCHANDISE ENTRIES AND COMMERCIAL OPERATIONS POSITIONS

FY 1980-1989

Commercial Operations Positions (FTE)

Fiscal Year	Formal Entries (000)	Cargo Inspection Positions	Commercial Investigations & Classification & Value Positions	Total
1980	4,374	5,108	4,082	9,190
1981	4,588	5,102	3,837	8,939
1982	4,703	4,693	3,748	8,441
1983	5,314	4,830	3,595	8,425
1984	6,421	4,842	3,541	8,383
1985	6,823	4,853	3,197	8,050
1986	7,251	5,087	3,678	8,765
1987	8,023	5,290	3,710	9,000
1988	8,878	5,802	3,725	9,527
1989	9,325	6,551	3,892	10,443

NOTES:

1. Between FY 1980 & 1989, formal entries increased 113%; total commercial operations staff increased 13%.

SOURCE: U.S. CUSTOMS SERVICE data.

TABLE 5

TRADE PROGRAM AND DUTIABLE ENTRIES COMPARED TO ENTRIES REVIEWED BY IMPORT SPECIALISTS

FY 1982-1989

FISCAL YEAR	TOTAL FORMAL ENTRIES (000)	DUTIABLE ENTRIES (000)	TRADE PROGRAM ENTRIES (000)[1]	BY-PASS RATE[2]	ENTRIES REVIEWED (NOT BY-PASSED) (000)
1982	4,753	3,148	2,025	35	3,089
1983	5,314	3,565	2,185	50	2,657
1984	6,421	4,402	3,624	60	2,568
1985	6,823	4,743	3,697	62	2,593
1986	7,251	5,076	4,045	65	2,538
1987	8,023	5,445	4,460	70 (est.)	2,407
1988	8,878	6,215 (est.)	4,972 (est.)	70 (est.)	2,479
1989	9,325	6,528 (est.)	5,222 (est.)	70 (est.)	2,798

1. Trade program entries include quota and monitored, GSP, antidumping, countervailing duty, steel program, and other agency entries.

2. This is the percentage of entries not designated for Import Specialist review. By-pass procedures were established by Customs because entry growth exceeded staff capability.

Table 6

Capital Improvements of United States-Mexico Border Facilities:
FY 1988 Appropriation

Nogales, AZ	
Mariposa	$174,330
Grand Ave.	$375,310
Morley Gate	$64,000
Calexico,CA	
New Station	$1,000,000
New Dock/Office	$411,320
R&A	$274,430
El Paso, TX	
Ysleta	$2,651,320
Bridge ofthe Americas	$442,200
Paso del Norte	$2,850,000
Laredo, TX	
Juarez-Lincoln Bridge	$5,745,000
Replace RR Bldg.	$118,000
Convent Street	$151,710
Brownsville, TX	
Security	$14,661
Expand Lanes	$46,135
R&A	$67,204
B&M Bridge	$1,173,000
Los Indios Bridge	$510,000

Table 6 continued

San Ysidro/Otay Mesa, CA	
Virginia Street	$75,000
Safety Work	$1,601,000
R&A	$612,000
Improve Commercial Lot	$456,950
Firearms Range	$350,000
Reconfigure Lanes	$310,000
Signs/Security	$517,000
Andrade, CA	$143,000
Antelope Wells, NM	$14,000
Columbus, NM	$100,000
Fabens, TX	$100,000
Fort Hancock, TX	$100,000
Lukeville, AZ	$148,000
Marathon, TX	$50,000
Naco, AZ	$65,000
Presidio, TX	$100,000
Progresso, TX	$100,000
Roma, TX	$100,000
San Luis, AZ	$79,000
Del Rio, TX	
Expand Lanes	$270,000
Security	$250,000
Replace Stations	$3,640,000
Los Ebanos, TX	$520,000
Douglas, AZ	$228,000
Eagle Pass, TX	$480,000
Rio Grande City, TX	$510,000
Tecate, CA	$338,000
Hildago, TX	$289,510
Falcon Dam, TX	$400,000
Santa Teresa, NM	$663,000
TOTAL	$28,678,080

Chairman GIBBONS. Thank you, Mr. Tobias.

I am going to ask the staff the next time, when we have a hearing like this, to put you ahead of Customs, and maybe they can respond to some of your statements.

Mr. TOBIAS. I would very much appreciate that.

Chairman GIBBONS. We will the next time we have our hearing. We will have a new commissioner then.

Mr. TOBIAS. Maybe it will be Mr. von Raab. He seems to have nine lives.

Chairman GIBBONS. I know that you would not be too happy with preclearance and moving a lot of your people overseas. I would not assume you would be. I am going to continue pushing the idea until we get some better control of what goes in airplanes, in addition to people.

Mr. TOBIAS. I would point out, Mr. Chairman, that Mr. von Raab, I thought, was less than candid today with you and the rest of the committee in talking about Canada, because he has already made decisions and announced decisions in Canada to cut the preclearance operation in Canada by about 75 percent. He has already told people that they will have to leave Canada, notwithstanding the fact that they went to Canada with 5-year programs in mind, 7-year programs, 8-year programs in mind.

When he said it is because the environment was not correct, the Customs Service has never been authorized to arrest people. They have always had to hold people for arrest by another country. The Customs Service does not have the authority to arrest someone on foreign soil, so I am not clear what Mr. von Raab was talking about when he said that the environment has turned for the worst.

But I did want to bring it to your attention, Mr. Chairman.

Chairman GIBBONS. I did not know that, and I will ask the staff to prepare a letter for my signature directing him not to do it unless we change the law.

Mr. TOBIAS. Thank you.

Chairman GIBBONS. You made some very serious charges there. I am sorry that so many of the members had to leave, because I think you are entitled to not only be heard, but be heard by all of us. I will read over your testimony and take it very seriously.

Mr. TOBIAS. Thank you very much, Mr. Chairman.

Chairman GIBBONS. Thank you, sir.

We now have a panel: from the American Association of Exporters & Importers, Mr. Barry Nemmers; the Joint Industry Group, Mr. William Outman; the National Customs Brokers & Forwarders Association, Mr. Kent; and Copper & Brass Fabricators Council, Mr. Mayer.

Mr. Nemmers, you are first.

STATEMENT OF BARRY NEMMERS, CHAIRMAN, CUSTOMS OPERATIONS COMMITTEE, AMERICAN ASSOCIATION OF EXPORTERS & IMPORTERS, AND PARTNER, GRAHAM & JAMES

Mr. NEMMERS. Thank you, Mr. Chairman. I am Barry Nemmers representing the American Association of Exporters & Importers. I am also a private practitioner; I practice in customs law.

In light of the hour, I will only address three points from our written statement which I believe are most responsive to the commissioner's own statements, and to Mr. Tobias'. All three have to do with the allocation of Customs resources.

The first one is automation. We believe that Customs deserves praise for bringing automation as far as it has and for creating a presumption of electronic data processing over paper processing. Customs also deserves praise for being creative and for having a willingness to ignore traditional assumptions of what it could and could not do in the process of designing electronic data processing programs for import processing.

Such concepts as paperless entry and triangular processing and the new automated clearinghouse proposal are productive and businesslike, and we welcome them. But the automation process is far from complete. Customs has yet to address the automation of post-entry processing—what happens to entries after they are filed by the importer and accepted by Customs. Many of these procedures, such as in liquidation and in the processing of protests, retain 19th century practices of writing out little slips of paper and stapling them or taping them to other sheets of paper.

Nevertheless, Customs should be funded and encouraged to continue its development of a comprehensive automation program. Customs is emerging from a green eyeshade and quill pen era into an era of electronic data interface and paperless entry, and we all are beneficiaries of that change.

At the same time, Customs still needs people. Customs remains inadequately staffed. It is hard to believe that the Commissioner was talking about the same Customs Service that we see when we go to the ports and the local customs houses. Severely backlogged teams and offices continue to be cut in half. Too frequent rotations deny import specialists the ability to gain the expertise and knowledge of the business that they need to properly process entries.

Import specialists want to become expert. Their morale is hurt by the fact that as soon as they learn about a new product area, they are transferred to something else. Transfers from high technology to peanut butter to apparel in a matter of 2 years does not make a good import specialist. Staff reductions and transfers both create inexcusable backlogs and delays and further damage morale.

Mr. Chairman, I find it personally embarrassing to have to continually explain to foreign companies that our Government cannot reach a very basic decision in less than a year simply because of its procedures.

A further point is that even when Customs does want to increase staff, when it goes out to recruit, it is hurt and badly handicapped in competition with the private sector because of the low salaries it can offer, especially in the metropolitan areas.

My third point is that the emphasis on enforcement over compliance now seems to be the norm at the Customs Service. Customs has an apparent preference to make a very few penalty cases. These are very labor-intensive and have very little deterrent effect on others. They would rather do that than use their other tools to call many more people to task more efficiently.

Customs does not seem to understand that for most companies the likelihood that a violation would be detected quickly and that

back duties are almost guaranteed to be recovered with interest, and would be assessed quickly, is sufficient to cause them to want to comply with the law in the first place. It is far more effective than the small possibility that a major penalty case would eventually be built against them many years down the road.

Customs subtly discourages the use of the voluntary disclosure process so that it can use its people to make few very large penalty cases. This to us seems to be a strange way to encourage across-the-board compliance with the law and a strange way to try to collect back duties which, either inadvertently or intentionally, were not paid.

These seem to be some of the same points that we make year after year when we come before you, Mr. Chairman, and you have given us great interest, continuing interest and a lot of support. We regret that we have to make the same requests again this year, but we would ask for you to continue to follow these points.

[The statement of Mr. Nemmers follows:]

STATEMENT OF BARRY NEMMERS, DIRECTOR AND CHAIRMAN, CUSTOMS OPERATIONS COMMITTEE, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

Good Morning, Chairman Gibbons, members of the Subcommittee. I am Barry Nemmers, a Director of the American Association of Exporters and Importers (AAEI), Chairman of its Customs Operations Committee and Partner in the law firm of Graham & James. AAEI is a national organization of approximately 1200 U.S. firms who are active in importing and exporting a broad range of products including chemicals, machinery, electronics, textiles and apparel, footwear and foodstuffs. AAEI members also include customs brokers, freight forwarders, banks, attorneys and insurance carriers. AAEI members are close observers of the U.S. Customs Service, and its policies and practices at ports nationwide. Our members deal with U.S. Customs on a day-to-day basis.

AAEI thanks the Committee for the opportunity to relate our concerns about Customs funding and to suggest improvements. AAEI recognizes the increasing budgetary pressures on all government agencies but believes wise choices can be made, which will improve Customs commercial operations and increase the revenue it generates.

AAEI believes that this Committee and you, Mr. Chairman, deserve great credit for the increased attention to Customs' commercial operations in FY1989. More personnel and funding generally has improved the Customs Service over the past year, but it is AAEI's opinion that Customs still requires this Committee's firm guidance to continue the improvements, especially when Customs is asked to do more and more.

AAEI has appeared before Congress and this committee previously to highlight major problems with Customs' Commercial Operations. Some have been satisfactorily resolved, others have not. Today, the Association asks that not only funding but also guidance, oversight and, when necessary, discipline over U.S. Customs be enhanced in FY1990.

In Fiscal Year 1988, Customs collected over $16 billion dollars in revenue for the General Treasury and is expected to exceed that in FY1989 and 1990. Over $15.5 billion, or 97%, was due to commercial operations. In other words, Customs collected approximately $25 for every $1 it spent on commercial operations. $656,249,000 of this amount was due to the merchandise processing fee, although the money was not released to Customs. The U.S. Customs Service generates a substantial revenue surplus and realizes a return of over 2500% that has not yet reached the point of diminishing returns. AAEI asks this Committee to ensure that the trade community receives adequate service for which it pays so dearly.

AAEI's members are constantly exposed to the best and worst aspects of Customs commercial operations. However, it is not a question of whether on balance Customs operations are at least minimally acceptable. Since Customs intervenes in the business operations of millions of Americans, it should strive for high standards with minimal disruptions. The successful programs that Customs has developed and implemented should set the standard for all its programs. Efficient and prompt commercial trade processing, minimal cost to the exporter or importer and a respect for all applications of the law should be the rule -- not the exception -- of Customs commercial operations. The budget authorization for FY1990 should ensure that Customs not only have the resources necessary to improved commercial operations but also mandate those improvements, especially in the following areas:

First, Customs suffers from inadequate staffing. In the past Customs has attempted to justify staff reductions by pointing to its budget on existing automated programs and on the development of new electronic programs. AAEI agrees with Customs that automation can result in efficiencies and better use of human resources. However, given the Automated Commercial Systems current and projected capabilities, it cannot replace qualified and experienced import specialists or inspectors. A computer program cannot examine goods, classify

merchandise or issue rulings. Customs must recognize that machines can only assist human functions, not replace the humans who perform those functions.

Second, we are concerned about the strained relations between Customs and the import community which arises from Customs inability or unwillingness to treat its commercial operations and its drug enforcement missions as philosophically and practically different tasks. Members of AAEI have as much a stake in drug enforcement as anyone else. The tools for one are t.. often inappropriate for the other. Likewise, AAEI members have a great stake in effective commercial enforcement. They are different assignments and need different treatments.

Unfortunately, all too often the attitude of the U.S. Customs Service, particularly from Headquarters to the field, conveys an assumption that importers, like drug smugglers, are "the enemy", who do not necessarily deserve due process, who do not deserve to be treated the same as other U.S. businesses. This attitude has lead to an unhealthy relationship between Customs and legitimate businesses. This relationship can best be highlighted by our members' hesitancy to complain publicly about Customs or to complain directly to the Service, for fear of retaliation by Customs in the form of increased, unwarranted inspections resulting in delays and greatly increased costs. While the oversight of this Committee and others has increased Customs cooperation with the trade community, much remains to be done.

AAEI would like to highlight several areas where our members are concerned with Customs' actions and attitudes and highlight areas where our members are encouraged by Customs' recent actions.

USER FEES

Particularly troubling is the fact that importers still are paying for Customs' overemphasis on enforcement through user fees. The Merchandise Processing Fee (MPF) was intended to cover the cost and raise the level of service for commercial operations -- unfortunately that has not happened. Although the appropriation for commercial operations finally has been increased, as a result of the MPF funds, the money collected through the MPF sits in the general treasury and has not been used as intended. In fact, not even all MPF revenue has been used to offset Customs commercial operation appropriation. Customs has increased commercial operations personnel, but also has used the additional appropriation funds to increase commercial enforcement, not trade facilitation.

AAEI believes that this committee should recommend ending the MPF As in past congressional testimony delivered before and after the imposition of the Merchandise Processing Fee (MPF), the Association believes that any MPF cannot be made consistent with U.S. GATT or other international obligations, even if the fee is transaction-based, rather than ad valorem.

AAEI agrees with the finding of the GATT Panel that the MPF, whatever the form, is nothing more than a "tax" for government mandated-services that do not "endow goods with safety or quality characteristics deemed necessary for commerce", "nor do they add value to the goods in any commercial sense". (See GATT Panel Ruling at 39). Further, as shown in the Budget Analysis for FY1990 (p. I-S17) and referred to above, the MPF has brought in far more in revenue than the cost of Customs commercial operations. While our trading partners may allow the U.S. the fiction of claiming that the MPF "offsets" the cost of Customs commercial operations, they and the GATT certainly will not allow the MPF to be used to raise an additional $56 million in revenue for the U.S. general treasury. Congress should allow the MPF to expire at the end of FY1990.

Should Congress ignore this inherent problem with the MPF and allow it to continue, AAEI urges the following:

1) The MPF not be extended to 1994 - Former President Reagan's proposed FY1990 Budget deliberately extends this tax on imports for 5 years past its scheduled expiration date of 9/30/90, ignoring Congress' pledge to make this a temporary tax and the GATT's prohibition on taxes on imports for general revenue purposes.

2) The MPF be used to increase and improve commercial operations - Although the MPF is unnecessary since increased resources and staffing will increase the funds returned to the general treasury (at a ratio of 25-1), the full amount of the funds generated by the MPF should be used on Customs commercial operations.

3) The MPF funds must cover the cost of all Customs-mandated operations - Despite the extra funds generated by the MPF, Customs continues to automate and initiates new programs which mandate increased costs to the trade community. When Customs contracts with a third-party and requires an importer to use that third-party's services, Customs must bear the cost of the those services.

4) The trade community must be allowed to provide input into any new user fee schedule - Last summer, Customs attempted to have legislation introduced to change the MPF from ad valorem to transaction-based. Although Customs asked AAEI and others to support its attempt, no new fee schedule was ever shown to us. In fact, Customs just released a draft of its new MPF legislative package, including a fee schedule, last Friday, March 17, 1989. AAEI certainly will provide comments and suggestions on the package to this Committee and Customs shortly.

INADEQUATE STAFFING

Despite the personnel and budget increases mandated by Congress last year, AAEI members from across the country consistently complain about the inadequate numbers of Customs personnel to do the job with which they are charged. The shortfall in Customs staffing, while slowly improving, remains evident in the field and Customs Headquarters from management level to support and clerical staff.

Across the country, Customs does not have enough staff to answer the phones, or do the necessary typing/word processing. Although customs is shoring up staff in particular areas and paying greater attention to certain programs such as implementation of the (HS) Harmonized System and U.S.-Canada F.T.A., this increased staffing for special programs is coming from severly reduced attention to other day to day tasks. AAEI is pleased that the Administration has accepted Congress' mandate in the FY1989 Budget that any hirings above 16,099 full-time equivalent employees must be assigned to commercial operations. However, AAEI does not understand why the Administration estimates that the level of customs personnel will decrease in FY1990 to 17,179 from 17,496 in FY1989 (See Executive Budget Analysis for FY1990 at I-S17). We believe that as a revenue-producing agency Customs can benefit from additional staffing in most areas of operations at all levels and that, in fact, it is in dire need of more staff in too many areas.

One area in particular needs special attention. Customs needs more personnel in its classification and value division including the Headquarters Office of Rulings and Regulation and the offices of the National Import Specialists. AAEI is aware that Customs soon will increase its C & V staff at Headquarters to 25 from 16 but the advent

of the HS, a new system of classifying merchandise, is resulting in and will continue to prompt U.S. businesses to seek more advice and time from Customs in order to continue trade with minimal disruption. Customs is attempting to meet this challenge through a Binding Rulings program, which much to Customs' credit, appears to be functioning well. However, once importers begin filing protests on HS classifications, the NIS's and Office of Regulations and Rulings are likely to be overwhelmed with work and unable to respond in timely fashion.

The staffing problem in the commercial operations area is exacerbated by Customs overemphasis on enforcement. Until Congress mandated Customs to add commercial operations personnel, any staff made available through a general personnel or budget increase automatically were added to the enforcement arm of Customs. Congress's oversight has eased this problem but apparently only constant monitoring of the Service will force a return toward adequate staff for commercial operations and allow them to gain experience in their jobs before they are moved. The staffing problems also can be eased by ending Customs' practice of rotating import specialists to different product lines before they can learn the product, business practices or even Customs own rulings. These transfers are totally counterproductive.

Customs has informed AAEI, however, that their recruitment efforts are suffering because of the low salaries, particularly in high-cost areas (i.e., most metropolitan areas) where the need for increased staff is most pressing. AAEI sympathizes with Customs and asks that this specific recruiting problem be reviewed, so that the Service can attract and retain quality employees.

EFFICIENT USE OF RESOURCES

AAEI members acknowledge a number of improvements in Customs efficiency yet Customs still is being asked "to do more with less". A most recent positive example is the establishment of the "Help Desk" to aid the public on questions about the new Harmonized Tariff System and the U.S.-Canada FTA. This type of program helps Customs and the trade community avoid future problems. It should be strongly encouraged.

However, too often poorly thought out Customs initiatives, such as "zero tolerance" and § 1595a(c) seizures, and procedures used in a recent valuation investigation waste Customs' and the trade community's time and money.

INCREASED COSTS

In the past few years, Customs at times has initiated new programs, usually without prior input from the trade community, which have caused significant delays in clearing goods and additional unwarranted cost. An illustrative example is the Centralized Examination Station program.

Customs has mandated that in each port, importers whose goods have been selected for inspection must move those goods to one of a few inspection sites. Customs has engaged independent contractors to operate the examination stations. When the CES first opened importers suffered delays of one to two weeks and incurred thousands of dollars in demurrage and devanning charges. The inordinate delays have been eased in most locations, but undue costs still persist since the importer must pay to transport his merchandise to and from the CES facility and pay a charge to the CES operator for the "privilege" of using the facilities. AAEI members have asked why the cost of the Customs-mandated service should not be paid by Customs out of the merchandise processing fee collected to fund commercial operations. Customs illogical answer is that although it mandated the CES program and contracted for the operator, it is not the operator of the CES and it

does not control the costs.

The CES is only one example of how Customs is shifting its operational burdens and accompanying cost to importers and their brokers. From attempts to change the statutory definition of customs fraud to the mathematics of determining proportional quota entry amounts, Customs over the past several years is making it more difficult for an honest importer to do business. And the importer is paying much more, through user fees and other charges, for these difficulties.

INCREASED COST TO IMPORTERS OF DRUG ENFORCEMENT

Another Customs initiative which has imposed extraordinary costs on importers is Customs' increased drug enforcement. To be clear, AAEI members have not and will not complain about legitimate drug enforcement activities. At times, however, Customs personnel will become overzealous, repeatedly inspecting an importer's merchandise even though nothing is found, or damaging legitimate goods in the search for illicit ones. Customs enforcement causes increased, direct costs for legitimate importers. Importers should be reimbursed for the damages.

For example, one of our members reports that its merchandise has continued to be subject to Customs intensive inspections from the latter part of 1988 and continuing into 1989 despite not one violation of Customs regulations. Of the importer's 172 entries in the summer of 1988, 54 of them, 31%, were marked for intensive examination. This figure is not even fully reflective since most of the exams were on larger containerized shipments rather than smaller air shipments. Our members incurred thousands of dollars in additional costs: moving the goods to the C.E.S., storage and inspection at the C.E.S. due to the slowness of exams, and cancelled orders by the importer's customers caused by the delays. The importer has complained to Customs and has yet to receive relief. While this experience is extreme, it is not unique. No matter the reason for the inspections to begin with, no U.S. business should be subjected to government intrusion after 172 entries without a problem. And an innocent U.S. business should not be forced to bear the cost of these unnecessary government intrusions.

Customs is making a good faith effort to deal with these problems. After discussions with AAEI, Customs issued Directive 1400-17 which explained to Customs personnel and the trade community the procedures to attempt to resolve the problems of repetitive inspections caused by the Automated Commercial System (ACS). The Directive, while helpful, is lacking in a number of ways: It does not set any time frame for resolution of the problems; leaves the burden on the importer to complain, rather than establishing a mechanism for Customs to police its own system (Customs has informed AAEI that a software program is being developed in this area but that it will not be ready until the Fall, at the earliest); and it does not address who should bear the cost of these unnecessary repeated inspections. Customs does not have the authority to redress the costs incurred of repeated inspections or damaged goods. Legislation is necessary. Only Congress can change that. Importers currently are paying hundreds and in some cases thousands of dollars, in addition to duty, CES charges, and user fees, for the "privilege" of engaging in international trade.

CUSTOMS UNIFORMITY

AAEI long has discussed the need to improve uniformity with the Customs Service. Customs has made a good faith effort to improve uniformity and should be encouraged to continue its current efforts. In particular, Customs new Binding Rulings Program appears to be a worthwhile expenditure of resources. Customs already has received over 1500 binding ruling requests and is averaging a 2-3 week turnaround time. The idea behind the Binding Rulings Program is a good one but

Congress should be aware of the program's limitations. Not all rulings will be issued within the 30-day period. Classification rulings in Chapter 98 of the HS, marking, valuation and drawback determinations are some of the areas not covered. AAEI believes that Customs FY1990 Budget authorization should include adequate funds to retain and enhance this program.

AAEI, however, has some concerns with the uniformity provision found in FY1989 Customs' Authorization (Sec. 7361(c), P.L.100-690 11/18/88). First, the regulations are to become effective April 1, 1989 but a proposed draft was not published until February 27, 1989. Second, section (c)(1)(B) allows parties other than the owner of the merchandise to petition for a uniform classification or valuation decision. AAEI has serious questions about the appropriateness of allowing a third-party other than a domestic competitor to become involved in the ruling process. We also feel it will result in an unnecessary burden on Customs resources, unnecessary costs to the importer, and may have serious legal implications.

CUSTOMS SEIZURES UNDER 19 USC 1595(a)(c)

AAEI continues to be concerned with the improper use of the seizure authority enacted in the Anti-Drug Abuse Act of 1986, which was intended to allow Customs to seize drugs in commercial shipments. Although the climate has improved, it remains that since 1987 only a handful of drug seizures have been made under this section. Congress did not intend that this law should circumvent the procedural safeguards of §1592 or §1304. AAEI urges that no funds be authorized for the seizure of commercial shipments under §1595a(c) in FY1990 or in the alternative that the definition of commercial goods allowed to seized under §1595a(c) be confined only to "prohibited merchandise", such as drugs, and not commercial goods which may be restricted.

EMPHASIS ON COMPLIANCE

AAEI believes that Customs can improve its trade facilitation and enforcement activities if the agency would emphasize compliance rather than penalties. Over the past decade, the information supplied by Customs to the trade community on how to comply with Customs regulations has decreased drastically. It was not until Congress initiated oversight on Customs last year that the Service began again to release rulings and C.S.D.'s in significant amounts. Further, when information was released to the public, it was with no or insufficient time for the trade community to adjust to the change. This was especially true in the area of textiles and apparel, which as an industry averages a 2-6 month lead time between manufacture and sale.

Importers should not be held accountable for Customs failure to provide adequate and consistent information on a timely basis. An increase in the budget to improve Customs ability to develop and disseminate compliance information would also improve the Service's enforcement procedures and results. A congressional mandate that Customs emphasize and encourage broad-based compliance before the fact instead of trying to make a few penalty cases and hoping that the penalties will deter others, is necessary.

Better communication between Customs and the trade community will benefit both parties and allow Customs to improve its enforcement initiatives. AAEI urges that this committee use its budget and oversight authority to mandate that Customs allow trade community input before the fact.

CONCLUSION

Mr. Chairman, members of the committee, the members of AAEI urge you to continue to remind Customs that it needs to respond to the legitimate concerns and needs of the importers and exporters. Although new initiatives may improve Customs efficiency, Congressional oversight of these initiative must be maintained to insure Customs funding is put to the best use.

AAEI members uniformly believe that Customs' overemphasis on enforcement has negatively affected its commercial operations and honest U.S. business. As the problems detailed earlier evidence, the trade community has been paying more for less -- less information, less staffing and less service. AAEI importers pay the lion's share, through duties and user fees, of the expense of the operations both as importers and taxpayers -- they are entitled to a major improvement in service. AAEI requests that Congress exercise its oversight and budgetary control so that Customs continues to facilitate trade. Focused enforcement efforts benefit everyone, especially AAEI members -- honest U.S. importers and exporters. "Enforcement at all costs", especially where legitimate importers bear those costs, encumbers real enforcement and vitiates cooperation between the trade community and Customs, most likely resulting in a loss of revenue.

The membership of AAEI stands ready to work with this committee, to ensure that budget funds are used for commercial operations and to encourage Customs compliance, not just enforcement, and to continue to restore the relationship between Customs and the community it serves.

Chairman GIBBONS. Well, I certainly regret that you have to make them over and over again, too. I know how frustrating it is. It should not be that way.

Mr. NEMMERS. Thank you.

Chairman GIBBONS. Mr. Outman.

STATEMENT OF WILLIAM D. OUTMAN, CHAIRMAN, COMMITTEE ON ENFORCEMENT AND COMPLIANCE, JOINT INDUSTRY GROUP, AND MANAGING PARTNER, BAKER & McKENZIE

Mr. OUTMAN. Good afternoon, Mr. Chairman. My name is William Outman. I practice customs law as well here in Washington. I also participate with the Joint Industry Group, which is a coalition of some 100 trade associations and business and professional firms involved in international trade matters, with emphasis on dealings with the U.S. Customs Service.

I actually appear before you this afternoon in my capacity as chairman of the group's Committee on Enforcement and Compliance. We have prepared a statement which I presume will be submitted for the record.

Chairman GIBBONS. Yes, sir. All of them will.

Mr. OUTMAN. Viewed philosophically, enforcement is perceived by the Customs Service as its mission; whereas, compliance is the other side of the coin; how the importing public can comply with a diverse body of law and regulations. From the Joint Industry Group's perspective, we see that there has become an imbalance with the emphasis on enforcement causing a counterproductive effect on the compliance sector. We think the Congress can play a very significant role in bringing this imbalance back into perspective.

Obviously, funding is the very fuel on which the Customs Service runs, and there are many commendable instances in which the Customs Service has used money that the Congress has given and has done what the commercial sector has found to be a rather commendable job. In the area of implementation of the Harmonized Tariff Schedule, I think outstanding marks would be due. The same is true on the very early phases of the United States-Canada Free Trade Agreement.

Our members, however, note a general deterioration in the quality of the ruling program which lies at the heart of the Customs Service's Office of Regulations and Rulings. In keeping with the amendments made by the Anti-Drug Abuse Amendments Act of 1988, the Customs Service has promulgated a new ruling posture. The comment period remains open.

We would encourage Congress to play a key role in monitoring this program. It is all well and good to say that you will issue a ruling, it will be uniform, and the ruling will issue within 30 days. I have practiced customs law for 25 years in this city. I have yet to see a ruling issue within 30 days, and I am not betting money that I am going to see it under the new program. But anything would be better than the present time.

Now, one point that the Joint Industry Group is especially troubled by is the lack of effective separation between the compliance mission and the commercial sector's mission. In many cases, the

same people are charged with the same type of job. And what is an appropriate means or method of discharging a drug case under the rubric of interdiction just does not wash when you are talking about commercial compliance.

A case in point, the Customs Service in October 1988 began a program dubbed "Operation RAP." In that particular program, the Service is on record as having acknowledged it sent 1,360 letters, many of whom are our members, and no doubt whom you consider fine, upstanding corporate citizens in your own home district. The Joint Industry Group objected to that conduct, noting our belief:

> That the Customs Service has absolutely no tangible or otherwise credible evidence of any wrongdoing or involvement on the part of any single recipient of the letter.

We received a reply in January, and the full text is part of our statement, from Deputy Commissioner Lane who acknowledged:

> While we may not currently have specific evidence of the culpability of each of the 1,360 identified importers, we do have sufficient information linking each of these * * * to the suspected rebating practices.

When I was in law school—and I imagine the same is true today—that was called a fishing expedition, and I would note that it is congressional funding that permits that to go on.

You may be interested, again, to see how congressional funding is being used by the Customs Service. The special agent in charge in Los Angeles was quite surprised to find that really no one came forward out of 1,360 recipients and confessed any involvement in the particular transaction then under consideration. Therefore, the Customs Service has now issued a four-page questionnaire and mailed it to each of the Customs Service's offices throughout the country which have jurisdiction over these 1,360 recipients. The Customs Service personnel involved in this, which have been import specialists and special agents, have been courteous enough to travel to each of these importers' premises, oftentimes two or three of them at a time. And we find that if there is really only one-half day of time invested, the service has put in somewhere between 1,500 and 2,000 man-days of time merely getting the questionnaires out, and not analyzing them or evaluating them.

We think this is a perfect case to point out that a blanket search may work on drug interdiction, that is one thing. But it sure flies in the face of commonsense and is not what the commercial sector needs. I would share Mr. Nemmers' views; it is a means or an attempt to do away with any attempts at voluntary disclosure.

Now, it was suggested to us that this Operation RAP was an isolated procedure. In our letter to Commissioner Lane, we expressed some concern that it could become the modus operandi for the future. I am sorry to say that we seem to have been a bit prophetic. A new investigation initiated out of San Francisco, CA, uses the same format, the same letter. So I rather imagine someone has figured this is a good idea.

I think the only effective means to rein in any form of overzealous Customs enforcement is by restricting congressional funding. The Customs Service needs qualified individuals to staff its Office of Regulations and Rulings. It needs qualified import specialists. It really need qualified auditors who can conduct detailed financial

analyses of transactions. Special agents, whose primary interests lie in drug busts and high adventure, should not be sent on compliance cases, and the Congress should make that very clear.

In closing, let me note that the Joint Industry Group has formed a legislative task force. We recognize that there are a number of areas in which the Congress will be looking at information developed through congressional oversight and otherwise, and we would like to play a very active role in that activity. The one thing that we are going to be suggesting to your committee, and perhaps others, is that the Customs Service should be deterred from using expanded seizure activity under authority of section 1595(a)(c), which authority was given the Customs Service because of the war on drugs. That should not be used in the commercial sector.

We will also be taking a stand in opposition to legislative proposals such as S. 179, which would seek to create a private right of action as a further enforcement measure. This is truly counterproductive.

We are going to support and actively work with you and the Customs Service in trying to ensure that the new ruling proposals do bear fruit. We would also note that the laws requiring per-unit appraisement and valuation of entries may have served well when Americans ordered foreign goods in quantities of one or two. With thousands or even hundreds of units now being ordered daily, old mechanisms simply do not work.

In short, the Joint Industry Group will seek to work with both the Congress and the Customs Service on the twin assumptions that effective enforcement of Customs laws is in the trade community's best interest, and that enforcement, and hence compliance, can best be achieved through adequate funding of the Customs Service's commercial operations.

Thank you.

[The statement of Mr. Outman follows:]

STATEMENT OF WILLIAM D. OUTMAN ON BEHALF OF THE JOINT INDUSTRY GROUP
BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS
AT THE HEARING ON AUTHORIZATION APPROPRIATIONS
FOR THE U.S. CUSTOMS SERVICE
MARCH 22, 1989

Mr. Chairman, my name is William D. Outman of the law firm of Baker & McKenzie of Washington, D.C. I appear here today in my capacity as Chairman of the Enforcement and Compliance Committee of the Joint Industry Group. The Joint Industry Group is a business coalition of one hundred trade associations, business firms and professional firms involved in international trade with an interest in customs matters. The trade associations which support the views expressed in this statement are listed in an Attachment I.

We appreciate this opportunity to present our views on oversight concerns of this Committee as it develops legislation to authorize appropriations needed to assure that the U.S. Customs Service can carry out its responsibilities effectively and efficiently. An adequately funded and well-administered Customs Service is essential to the business community in facilitating the flow of commerce of the United States. Such a Customs Service is needed to meet the challenge of the growth in the interdependence of national economies. Just as important, maintaining the competitiveness of the United States demands a Customs Service that keeps pace with the advancing technologies for examining, identifying, documenting and efficiently processing international commerce for customs and tariff, trade statistics, transportation and other purposes.

FUNDING

The Joint Industry Group, as a business coalition, is very much aware of the continuing need for budgetary restraint concerning government expenditures. We recognize that for a number of years the requests in the President's budgetary proposals for funding commercial operations of the Customs Service have been viewed as inadequate. Fortunately, this has resulted in approval of additional funding by the Congress.

As an informal coalition, the Joint Industry Group does not attempt to recommend specific funding levels for the U.S. Customs Service. We urge the Committee to examine closely the requested staffing levels, both in the Districts and at Headquarters. There has been a substantial increase in the workload and responsibilities brought about in tariff classification and other entry issues as a result of the implementation of the Harmonized Tariff Schedule and of the United States-Canada Free Trade Agreement. Many seasoned observers of customs matters have been pleasantly surprised at the relatively smooth transition that is being made with respect to both the Harmonized Tariff Schedule and, generally speaking, the new conditions of entry afforded by the Free Trade Agreement. However, many high technology firms are finding that the documentation requirements of Customs Form 353, which must be used to establish FTA eligibility, are so onerous that they are unable to claim the intended benefits of the FTA.

The Customs Service deserves to be congratulated for the efforts it has made to acquaint its own personnel, and for its cooperation with the private sector, in training provided for the Harmonized Tariff System. However, it is still too early to conclude that the number of rulings generated by the new tariff classification system, and by the country of origin requirements of the Free Trade Agreement will not require additional staffing. We strongly recommend that the possibility of increased staff demands be taken into account, particularly with respect to reducing the backlog of pending rulings, in the Committee's recommendation on authorization levels for the Customs Service.

ENFORCEMENT/COMPLIANCE

The Joint Industry Group has supported adequate funding of commercial operations of the Customs Service and has expressed concern that in funding of enforcement activities the needs for maintaining commercial operations at levels which would meet the needs of the business community were being overlooked. There is no question that substantial resources of the Customs Services and other agencies must be devoted to stanching the flow of drugs into this country. But effective enforcement in commercial operations, as well, must be based on adequate resources.

Effective enforcement of customs law is in the interest of the trade community, but such enforcement can best be achieved through adequate resources of trained personnel and informed compliance by the trade community.

One means by which the trade community attempts to be kept informed is to request rulings with respect to classification of imports for duty purposes and other questions affecting conditions of entry. The business community is very much dependent on the issuance of legal rulings. It is not unusual for even the least complicated ruling to involve several months from date of receipt of the case at Headquarters to the date of issuance of the decision, and in many cases the delay is far longer. The Customs Procedural Reform Act of 1978 required that all precedential decisions including ruling letters, internal advice memoranda and protest review decisions be published or otherwise be made available to the public. Although a procedure exists for the publication of precedential rulings, that procedure is applied on an ad hoc basis. As a result some rulings are never published even though they represent the current thinking of Customs, and thus will be relied upon by Customs in subsequent transactions involving similar issues.

Enforcement statistics of the Customs Service on a variety of alleged violations of customs law are meaningless if the business community is not being informed of the Customs Service's interpretations and application of their own regulations and rulings. One of the results is the widespread, and erroneous perception that a substantial volume of imports are entered into the United States is violation of U.S. customs law. As a result, we have encountered such proposals such as Senator Spector's bill (S. 179 as recently reintroduced in this Congress) which would permit domestic businesses to file suit in Federal court and seek injunction against, and appropriate damages for alleged violation of customs law.

PRIVATE RIGHT OF ACTION

The Joint Industry has consistently opposed the provisions of S. 179 and similar proposals with respect to its provisions relating to alleged violations of customs law. It is our view that the legislation not only would subject reputable U.S. companies to harassment in the form of nuisance suits, it would cripple Customs Service enforcement. We reiterate that strong opposition and request the Committee to not consider the measure in the form of S. 179 or as an amendment to other legislation it is reporting to the House in the absence of full public hearings.

OPERATION RAP

Another recent enforcement effort became visible to the Joint Industry Group when the Customs Service sent form letters sent to 1,250 importers informing them of a formal investigation directed toward, "but not limited to, transaction value and/or exclusions from transaction value (e.g., international freight and insurance), since January 1, 1983". These letters initiating what we understand is called "Operation RAP are of great concern in the trade community, but not because rebates of international freight charges were being investigated. Truly fraudulent business operations are as much a threat to legitimate business concerns which import as they are to purely domestic business firms. The greatest concern is that some of the language of the letters appears to foreclose the right of prior disclosure which is established in 19 U.S.C. 1592 (c) (4).

As suggested in our letter to the Deputy Commissioner of Customs on December 14, 1988, the Joint Industry Group feels that it would be very detrimental to both the Customs Service and the trade community if the investigatory approach which could be inferred from the original letter is pursued to the point where the "voluntary compliance which lies at the heart of effective Customs administration will become a thing of the past". Another concern is that this type of investigative approach inevitably leads to costly record searches which could be avoided if more specific information were made available in the notice of investigation. A member reported receiving a quite similar letter dated February 17th dealing with investigations just as broadly based, "directed toward but not limited to transactions values and components thereof (e.g., assists) declared to Customs since January 1, 1984." At this time the Joint Industry Group continues to follow the course of these investigations with concern, and would appreciate the opportunity to check back with the Committee on this matter when appropriate.

The Joint Industry Group correspondence with the U.S. Customs Service concerning "Operation Rap" is attached as a part of this statement for inclusion in the record or for the Committee files, as you see fit.

AUTOMATION

Despite our problems with some aspects of Customs administration, the Joint Industry Group commends the U.S. Customs Service's efforts in the area of automation of customs procedures. The leadership exhibited by the Commissioner of Customs in the development of internationally acceptable electronic data interchange standards should be recognized, as should his efforts to apply automated data techniques to the day to day procedures for clearing goods through Customs. Such programs carry the potential for streamlining the import process on a revolutionary scale for the government and private sector alike, thereby improving efficiency and reducing costs for both. To be viable, however, customs automation programs should meet at least two requisites: First, they should be as non-intrusive as possible with respect to the privacy of company data banks and the normal flow of business operations. Second, there must be considerable emphasis on training Customs field personnel and the business community to assure that information and guidelines regarding automation techniques are mutually understood. Enforcement procedures which provide importers with necessary training before the fact, rather penalizing importers after the fact constitute sound management. Moreover they are wholly consistent with an automated paperless entry system. Such procedures encourage compliance and improve the efficiency and effectiveness of Customs enforcement.

LEGISLATION

With these thoughts in mind as well as other concerns expressed above, the Joint Industry Group has begun to review the goals of the Customs Procedural Reform Act of 1978 and to develop legislative proposals that will address the increased business risks that many companies are experiencing in attempting to comply with the many rules and regulations governing entry of goods into the United States. The approach of the Group will be based on the twin assumptions that effective enforcement of customs law is in the trade community's best interest and that such enforcement can best be achieved through adequate Customs resources and informed compliance by the trade community. We look forward to discussing with the Committee possible legislative proposals growing out of these efforts of the Joint Industry Group at the appropriate time.

CONSISTENCY OF CUSTOMS DECISIONS

The Joint Industry Group is examining the proposals of the Customs Service with regard to the needed consistency of Customs rulings appearing in the Federal Register, February 27th (page 8208) pursuant to the requirements enacted in the Anti-Drug Abuse Amendments Act of 1988. We intend to share our views on this important issue with the Committee.

Mr. Chairman, thank you very much for the opportunity to appear before the Trade Subcommittee on issues that are very important to the day to day operations of the business community.

APPENDIX I.

TRADE ASSOCIATIONS OF THE JOINT SUPPORTING STATEMENT
PRESENTED TO THE COMMITTEE ON FINANCE ON CUSTOMS AUTHORIZATION
OF APPROPRIATIONS, MARCH 7, 1989

AIR TRANSPORT ASSOCIATION
AMERICAN ELECTRONICS ASSOCIATION
AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS
AMERICAN PAPER INSTITUTE
AMERICAN RETAIL FEDERATION
AMERICAN WATCH ASSOCIATION
AUTOMOBILE IMPORTERS OF AMERICA
CHEMICAL MANUFACTURERS ASSOCIATION
COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION
ELECTRONIC INDUSTRIES ASSOCIATION
FOREIGN TRADE ASSOCIATION OF SOUTHERN CALIFORNIA
INDA (ASSOCIATION OF THE NONWOVEN FABRICS INDUSTRY)
INTERNATIONAL FOOTWEAR ASSOCIATION
INTERNATIONAL HARDWOOD PRODUCTS ASSOCIATION
MIDWEST IMPORTERS TRADE ASSOCIATION
MOTOR VEHICLE MANUFACTURERS ASSOCIATION
NATIONAL ASSOCIATION OF FOREIGN TRADE ZONES
NATIONAL ASSOCIATION OF PHOTOGRAPHIC MANUFACTURERS
NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION
INTERNATIONAL MASS RETAIL ASSOCIATION
NATIONAL RETAIL MERCHANTS ASSOCIATION
NORTHWEST APPAREL AND TEXTILE ASSOCIATION
SEMICONDUCTOR EQUIPMENT AND MATERIALS INTERNATIONAL
UNITED SHIPOWNERS OF AMERICA

THE JOINT INDUSTRY GROUP
WASHINGTON, D.C.

STATEMENT BY THE JOINT INDUSTRY GROUP
APPENDIX II: Operation Rap
1. Letter to Deputy Commissioner Lane
2. Response by Deputy Commissioner Lane

Chairman
Kenneth A. Kumm
Secretariat
Harry Lamar
818 Connecticut Avenue
12th Floor
Washington, D.C. 20006
Telephone (202) 466-5490
Fax (202) 892-8698

December 14, 1988

Mr. Michael H. Lane
Deputy Commissioner of Customs
U.S. Customs Service
1301 Constitution Avenue, N.W.
Washington, D.C. 20229

Dear Deputy Commissioner Lane:

On behalf of the members of the Joint Industry Group* and further to our meeting on November 29, 1988, I would like to state for the record our opposition to the methods employed in instituting the investigation into certain maritime and insurance rebate activities by the Customs Service's Los Angeles Field Office, but with the concurrence, and indeed assistance, of the Headquarters Office in Washington. While you are no doubt familiar with the practice to which this letter is addressed, I am attaching an excised

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* The trade associations supporting the views expressed herein are listed on Attachment A.

copy of the one of the 1,500 letters (the "Letter") and the Federal Register Notice of December 6, 1988 (the Notice") which are the public manifestations of the Customs Service's efforts to uncover the facts. The Joint Industry Group believes the approach taken to be ill-conceived and, if pursued, will serve to deprive importers of due process rights presently embodied in the law. In this regard, several points bear mention. They are:

1. In the opening paragraph of the Letter, Special Agent Edgar A. Adamson's states that the Service has commenced a formal investigation of "import transactions" involving the named entity and all related parties. The second paragraph makes clear that the scope of this investigation is potentially boundless. These assertions can only be based on the loosest of factual and legal nexuses. Put to the test, we believe the Customs Service has absolutely no tangible or otherwise credible evidence of any wrongdoing or involvement on the part of any single recipient of the Letter. Rather, you have indicated the Letter was mailed to 1,500 importers in an effort to have what you assert are an estimated 200 violators, no one of which is known, come forward and disclose facts the Service cannot establish. Despite the lack of information linking any specific recipient of the Letter to the suspected rebate practices, the Letter

(and now the Notice) attempts to effect the wholesale disenfranchisement of rights provided under 19 C.F.R. § 162.74.

2. We take issue with the Customs Service's presumption that it can open a blanket investigation and thereby negate the "prior disclosure" provisions embodied both in law and the Customs Service's regulations. This attempt to deny the prior disclosure benefits (which should extend to a qualifying party even if the Service believes the underlying conduct to be fraudulent) will also be viewed with disfavor by both the courts and the Congress.

3. The firms selected for inclusion in this dragnet are numerable, in fact, too numerable. More to the point, the recipients should not be put through a meaningless due diligence exercise under threat of penalty simply because the Service believes there is a problem. This entire exercise has created needless cost without any demonstrable benefit.

4. The Letter by innuendo accuses its recipients of engaging in certain practices. In the same breath, it invites the party to step forward in order to be penalized, albeit with some ill-defined "extraordinary mitigating factor" serving as the encouragement to make duty tenders and to provide all pertinent information. This same offer is

extended in the Notice. It makes no sense, however, to consider such invitations seriously. To come forward and proclaim innocence is an invitation to investigation. To confess involvement in the targeted rebates gains one nothing because as you stated so clearly, "we don't believe those who have engaged in this practice should be given the benefits of prior disclosure."

5. We condemn this investigatory approach in the strongest of terms. If it is pursued, voluntary compliance which lies at the heart of effective Customs administration will become a thing of the past.

* * *

The Joint Industry Group and its members have long worked with the Customs Service in attempting to create an environment for more effective administration of the diverse laws and regulations with which the Customs Service must contend. If the Customs Service wishes to join other government agencies in an effort to stop unauthorized rebate practices, this should be pursued in the same fashion as any other civil enforcement mission. Regrettably, a different tack has been taken in this case, and we are concerned that, unchecked, it will become the modus operandi for the future. We wish to move forward on a basis that will maximize

both voluntary compliance with, and effective enforcement of, Customs law. Therefore, we strongly urge you to revisit the issue and see if there is an alternate means to enlist the cooperation of our members as well as the other interest groups all of which have noted their opposition to the Letter.

Respectfully submitted,

William D. Outman, II
Chairman, Committee on
Compliance and Enforcement

WDO:ban
Attachments

cc: Mr. Kenneth A. Kumm
Mr. Harry Lamar

DEPARTMENT OF THE TREASURY

U. S. CUSTOMS SERVICE

LOS ANGELES, CA

October 21, 1988

Refer to:
LA08PRALA015

Dear Sir:

This is to advise you that the U.S. Customs Service, Office of Enforcement, has commenced a formal investigation, as defined in Title 19, Code of Federal Regulations, §162.74, of import transactions involving , and related parties.

The investigation is directed toward, but not limited to, transaction value and/or exclusions from transaction value (e.g., international freight and insurance), since January 1, 1983.

It has come to our attention that some companies are overstating freight and insurance charges on imported merchandise, inasmuch as the amounts shown on invoices do not reflect discounts, commissions, bonuses, or rebates received by the foreign manufacturer, exporter, and/or importer of record; from the freight and insurance companies. U.S. Customs has determined that discounts, commissions, bonuses or rebates, received through CIF and FOB prepaid transactions are part of transaction value and therefore dutiable at the same rate as the merchandise being imported.

Manufacturers, exporters and importers who have engaged in the aforementioned practices are encouraged to make duty tenders and provide all pertinent information to U.S. Customs on or before December 2, 1988. These actions may be considered an extraordinary mitigating factor in respect to any possible civil penalty action that might be commenced against the importer.

For further information contact:
Carley D. Moore
Senior Special Agent
Office of Enforcement
U.S. Customs Service
300 S. Ferry Street, Room 2037
Terminal Island, CA 90731
(213) 514-6347

Sincerely,

Edgar A. Adamson
Special Agent in Charge
Los Angeles, CA

REPLY TO: SPECIAL AGENT IN CHARGE. 300 S. FERRY STREET. ROOM 2037. SAN PEDRO. CA 90731

A copy of the Notice will be published in a newspaper of general circulation in Dallas, Texas.

(Catalog of Federal Domestic Assistance Program No. 59 011, Small Business Investment Companies)

Dated: November 29, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-27991 Filed 12-5-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 41958]

United States-Mexico All-Cargo Service Proceeding; Prehearing Conference

The prehearing conference in this proceeding will be held on Thursday, January 5, 1989 at 10:00 a.m. in Room 5332, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC.

On or before December 28, 1988, the parties shall submit one copy to each other and four copies to the Judge of (1) any proposals for changes in the evidence request contained in Appendix C to Order 88-11-37; (2) proposed procedural dates; (3) proposed stipulations; and (4) a statement of position.

Dated at Washington, DC, November 30, 1988.

Burton S. Kolko,

Administrative Law Judge.

[FR Doc. 88-28031 Filed 12-5-88; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 46564]

United States-Mexico All-Cargo Service Proceeding; Assignment of Proceeding

November 30, 1988.

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street, Washington 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 88-28032 Filed 12-5-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Customs Service

Overstatement of Charges on Entry Documentation

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of Customs investigations of overstatement of charges on entry documentation.

SUMMARY: Entry documentation covering merchandise imported into the U.S. is required by law to set forth all charges upon merchandise. The actual amounts paid to freight and insurance companies, less any discounts, bonuses or rebates paid by the freight and insurance companies to the seller, must be reflected on the documents. It has come to the attention of Customs that many invoices set forth overstated freight and insurance charges as the invoices do not reflect the discounts, commissions, bonuses or rebates received by the shippers or manufacturers from the freight and insurance companies. This document notifies the public that Customs is currently investigating such practices.

EFFECTIVE DATE: December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Fischer, Office of Enforcement, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8168).

SUPPLEMENTARY INFORMATION:

Background

All invoices for imported merchandise are required by 19 U.S.C. 1481(a)(6), and § 141.86(a)(6), Customs Regulations (19 CFR 141.86(a)(6)), to set forth all the charges upon the merchandise itemized by name and amount, including freight, insurance, commissions, cases, containers, coverings, and cost of packing. Pursuant to 19 U.S.C. 1485(a)(9), and § 141.89(a)(9), Customs Regulations (19 CFR 141.89(a)(9)), invoices must also set forth all rebates allowed upon exportation of the merchandise.

The importer of record is required by 19 U.S.C. 1484(a)(1)(B) to file such documentation as is necessary to enable the appropriate Customs officer to assess the proper duties on merchandise, collect accurate statistics with respect to merchandise, and determine whether other applicable requirements of law are met. Such documents required by Customs include the entry summary. Customs Form 7501. Pursuant to § 141.61(e)(1), Customs Regulations (19 CFR 141.61(e)(1)), the applicable information required by the General Statistical Headnotes, Tariff Schedules of the U.S. (TSUS), shall be shown on the entry summary. General Statistical Headnote 1(a)(xiv) provides that when persons making customs entry of articles imported into the customs territory of the U.S. complete the entry summary, they shall include the aggregate cost, in U.S. dollars, of freight, insurance and all other charges, costs and expenses incurred in buying the merchandise from alongside the carrier at the port of exportation in the country of exportation and placing it alongside the carrier at the first U.S. port of entry.

It has come to the attention of Customs that some importers are overstating freight and insurance charges on entry documentation by not reflecting accurately discounts, commissions, bonuses or rebates received by the shippers or manufacturers from freight and insurance companies. This has resulted in undervaluation of imported merchandise as the value of the merchandise is determined pursuant to 19 U.S.C. 1401a as the total payment made by the buyer, exclusive of any costs, charges or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise. Customs has further learned that some shippers and manufacturers are receiving the excess monies and/or discounts on CIF and FOB prepaid transactions.

Pursuant to 19 U.S.C. 1485(a), every consignee making an entry is required to declare on the entry that the prices set forth in the invoice are true to the best of his knowledge and belief, that all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct; and that he will produce at once to the appropriate Customs officer any invoice paper, letter, document or information received showing that any such prices or statements are not true or correct. Accordingly, overstating freight and insurance charges is a violation of 19 U.S.C. 1485(a). Violation of 19 U.S.C. 1485(a) could result in a penalty under 19 U.S.C. 1592.

The purpose of this notice is to notify the importing public that Customs is currently investigating the practice of overstating freight and insurance charges on import documents. Manufacturers, exporters, and importers who have engaged in the aforementioned practices are encouraged to make duty tenders and provide all pertinent information to U.S. Customs. These actions may be considered an extraordinary mitigating factors with respect to any possible ci-

penalty action that might be commenced against the importer.

William von Raab,
Commissioner of Customs.

Approved: November 10, 1988.

John P. Simpson,
Acting Assistant Secretary of the Treasury.

[FR Doc. 88-27983 Filed 12-5-88; 8:45 am]
BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Youth Exchange Program

The Bureau of Educational and Cultural Affairs, Youth Exchange Staff of the U.S. Information Agency announces its intention to fund a series of educational and cultural projects during 1989 and seeks written expressions of interest and capability on the part of private sector organizations that wish to be considered for grants to conduct these projects. This is not a request for proposals. Interested, potentially qualified organizations will be sent letters inviting them to submit detailed proposals and guidelines for these submissions once the Agency has developed specific solicitations. In each instance at the time of solicitation a limited number of organizations will be competing with each other in bidding on a project design. The list of competing organizations will include, but not necessarily be limited to, those that respond to this invitation and will be developed based on professional staff assessment of relevant qualifications.

Unless otherwise indicated below, the typical project is a short-term (4–6 week) group activity for participants identified by USIS posts overseas to be conducted during the summer months of 1989. The components of the programs will vary, depending on the theme, age of participants, length of stay, and other specifications. These projects are also primarily designed for international youth, not Americans, unless otherwise indicated.

Programs are authorized under Pub. L. 87–256, the Mutual Educational and Cultural Exchange Act of 1961, whose "purpose is to increase mutual understanding between the people of the United States and the people of other countries." Programs under the authority of the Bureau must be balanced and representative of the diversity of American political, social, and cultural life.

Respondents are hereby notified that budgetary constraints may prevent some of these projects from being funded in the final analysis.

Eligibility

To be eligible for consideration organizations must be incorporated in the U.S., have not-for-profit status as determined by the IRS, and be able to demonstrate expertise in a field relevant to the nature of the project on which they are bidding. Organizations in existence less than four years will only be eligible for grants under $60,000. Experience programming international visitors is desirable.

Western Europe

Germany

A. Congressional interns—a program for 6 West German youth aged 20–25 to provide them with a two-month experience in national and regional legislative affairs in the U.S., including internships in congressional offices and exposure to various regions of the U.S.

B. Journalists—a 6-week program for 6 young West German journalists to experience living in the U.S. and serving as interns in media organizations.

France

A. A project in France on the theme of the Bicentennial of the French Revolution for a group of American high school youth. A reciprocal project for a group of French youth on the theme of liberty and equality will also be conducted. The French Government will share in the cost of the projects.

B. A project to send a delegation of politically active American youth aged 18–25 to Paris in the summer of 1989 for a youth conference entitled "Paris '89" organized by youth wings of international political movements.

Spain

A project for a group of university student leaders from Spain on the theme of the 500th anniversary of Columbus' first voyage to the New World. The project will focus on the creation of "the American" culture and the contributions of various ethnic groups to its development.

Portugal

A project for university student leaders on the theme of leadership development.

United Kingdom

A. A project for student union university leaders to learn about the structure of the U.S. Government, higher education, democracy in a pluralistic society, and the foreign policy process, with special emphasis on international security affairs.

B. As two-way exchange project for top U.S. and U.K. students of one or more leading university drama departments.

A regional European project on the theme of "Challenge of Federalism" for leaders of youth wings of political parties.

Africa (Sub-Saharan)

A. American Studies—A 2-way 4–6 week project for African students of American studies in universities that have links with American universities.

B. Constitutional Law—A 4-week project for students of law in anglophone countries focusing on the U.S. Constitution and the practice of law in the U.S.

C. Arts—A 4-week project for young performing and visual artists from francophone African countries to explore the arts in America. Program will be conducted in French.

D. Sciences—A 4-week project for gifted students in science and math (upper high school level), preferably to attend a summer enrichment activity focusing on science and math.

American Republics (Latin America/the Caribbean)

Mexico

A. Arts and Crafts—A 4-week project for young folk artists and craftsmen to learn about the U.S. crafts heritage and to demonstrate their skills.

B. Political Process—a 4-week project for university students and politically active youth leaders on U.S. political processes, with special reference to the transition from one administration to another; also U.S.-Mexican relations.

C. U.S.-Mexican Relations—A 3-week project to send a group of U.S. university students interested in U.S.-Mexican relations to Mexico to meet with Mexican university students. The USIA grant will be primarily for international travel and partial per diem, with modest additional funding for the organization's administrative expenses.

Uruguay

The Agency will sponsor a 6-week program for American students in community colleges to attend classes in Spanish, history and culture at the Binational Center (BNC) in Montevideo during summer 1989. The Agency grant will be primarily for international travel only for 20–25 students, with modest additional funding for the organization's administrative expenses. Hosting will be provided by the BNC.

Regional Projects

A. Young Diplomats—A 4-week project for students from Latin

Attachment A

Joint Industry Group Associations

Air Transportation Association Of America
American Electronics Association
American Association Of Exporters And Importers
American Retail Federation
Automobile Importers Of America
Chemical Manufacturers Association
Computer And Business Manufacturers Association
Electronic Industries Association
International Footwear Association
International Hardwood Products Association
International Mass Retail Association
Midwest Importers Trade Association
Minnesota World Trade Association
Motor Vehicle Manufacturers Association
National Association of Foreign Trade Zones
National Bonded Warehouse Association
National Customs Brokers & Forwarders Association
National Retail Merchants Association
Northwest Apparel And Textile Association

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C.

INV 8 E:EO:FI:O RF

January 24, 1989

Mr. William Outman III
Chairman
Committee on Compliance and
Enforcement
The Joint Industry Group
818 Connecticut Avenue, NW.
Washington, D.C. 20006

Dear Mr. Outman:

Thank you for your letter dated December 14, 1988, concerning the U.S. Customs Service's investigation of certain freight and insurance rebate activities as it relates to the computation of transaction value. You expressed the Joint Industry Group's opposition to the methods employed in instituting the investigation, and to the letter which was sent to certain importers by the Special Agent in Charge, Los Angeles. In particular, you expressed concern that the scope of the investigation is "potentially boundless" and that the "Customs Service has no tangible or otherwise credible evidence of any wrong-doing or involvement on the part of any single recipient of the letter."

The U.S. Customs Service has developed information that freight and/or insurance rebates are paid on virtually all large shipments from the Pacific rim countries, and these charges are then often overstated on CIF and FOB prepaid entries. In addition to general information, we have a large body of specific information relating to individual importers, sellers, shipping companies, and other involved parties. This information was obtained directly from the importing industry and from other government agencies. The letters you referred to were directed to 1,360 importers for which the U.S. Customs Service has initiated preliminary investigations concerning the narrow issue of freight and insurance on import transactions. This is a small fraction of the nation's 750,000 importers. While we may not

currently have specific evidence of the culpability of each of the 1,360 identified importers, we do have sufficient information linking each of these importers' transactions to the suspected rebating practices.

We encouraged parties that have engaged in this practice to make duty tenders and provide all pertinent information to the U.S. Customs Service. We asserted that such action may be considered an extraordinary mitigating factor in respect to any possible civil penalty action that may be commenced. This information was provided in the letters, and also in a Federal Register Notice which attempted to inform those innumerable parties that had not received a letter of the information concerning the U.S. Customs Service investigation. Concerning our encouragement to importers to provide all pertinent information to the U.S. Customs Service concerning this practice and our assertion that such action would be an extraordinary mitigating factor, you indicated that this "invites the party to step forward and be penalized." You further indicated that, "It makes no sense, however, to consider such invitations seriously. To come forward and proclaim innocence is an invitation to investigation."

I can assure you that our assertion concerning actions that may be considered extraordinary mitigating factors is a valid one and will be applied generously on a case-by-case basis. However, the failure to come forward will not stop the investigation. The investigations currently underway will be completed and all leads vigorously pursued. We are continuing to gather additional information on rebating practices and additional investigations may be initiated. For instance, based on information currently being developed, we expect to initiate investigations of certain European transactions affected by Atlantic maritime rebating practices.

You also expressed particular concern that the letter directed to importers, and the Federal Register Notice, was an attempt "to effect the wholesale disenfranchisement of rights provided under 19 CFR 162.74" (prior disclosure provisions). Whether or not a party has received one of the aforementioned letters, that party can still make a claim for a prior disclosure in accordance with the

procedures set forth in 19 CFR 162.74. I can assure you that each claim will be reviewed by a noninvestigatory office in Customs to determine if the claim is valid. This review will include a determination of whether or not the investigatory record indicates that the circumstances set forth under 19 CFR 162.74(d), for commencement of a formal investigation of a violation of Title 19, United States Code, Section 1592, exists with regard to the disclosing party and the information received. In any event, if a prior disclosure claim is made and the transactions involve totally unrelated parties, the U.S. Customs Service would not penalize the importer in the absence of evidence that the importer knew or should have known that rebates had been received in the transactions.

I appreciate receiving the Joint Industry Group's opinions and concerns in these matters and I hope this additional information has clarified our position.

Sincerely,

Michael H. Lane
Deputy Commissioner

Mr. Outman

As indicated in the attached letter to the Journal of Commerce "The Customs Service has no intention of penalizing importers who was not aware of the rebating scheme."

MHL

THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

January 10, 1989

Dear Mr. Levinson:

I want to clarify the issue of prior disclosure which Dick Abbey, former Customs Chief Counsel, raised in your newspaper on January 5. The case in point began last October, when the Customs Agent in Charge in Los Angeles sent letters to 1,360 importers across the country. These importers had been targeted in an investigation aimed at halting the practice of overstating freight and insurance charges.

A notice of this investigation, known as Operation Rap, appeared on December 6 in the Federal Register. The purpose of Operation Rap is to stop this practice, collect lost revenue, and prosecute civilly and criminally culpable importers.

The Customs Service has no intention of penalizing importers who were not aware of the rebating scheme. Importers who have exercised reasonable care and competence will not be charged with a penalty under 19 USC 1592 when they make a prior disclosure. Further, we will not find an importer culpable unless we find evidence that he knew or should have known that rebates were received and then not disclosed to Customs.

We have replied to the concerns of the American Association of Exporters and Importers in their letter of November 7. We will be happy to make a copy of this letter available on request.

Yours faithfully,

William Rau

Mr. Marc Levinson
Editorial Director
The Journal of Commerce
110 Wall Street
New York, New York 10005

Chairman GIBBONS. Thank you.
Mr. Kent.

STATEMENT OF J.H. KENT, WASHINGTON REPRESENTATIVE, NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC.

Mr. KENT. Mr. Chairman, the National Customs Brokers & Forwarders Association welcomes this opportunity to appear before you today. I will abbreviate my remarks. We view a hearing before your committee to be one forum where the private sector can engage in a serious discussion on often complicated issues and gain not necessarily a sympathetic, but always a knowledgeable ear about our relationship with the Customs Service. Not only do you hear us out with concern and dispassion, but you also do not hesitate to step in when that is appropriate. We are grateful for your attention.

The Customs Service's fiscal year 1990 budget proposal is focused largely on drug law enforcement. It is difficult to disagree with the Congress' and the administration's sense of urgency about drugs—and we do not. Customs, however, has more than one function, and we have assumed the often difficult role of reminding the public that U.S. Customs must facilitate the flow of commercial cargo and ensure the collection of revenues that are a consequence of import trade. In a period when fiscal responsibility and budget deficits preoccupy our public policy, that role is highly important also.

NCBFAA strongly believes that resources must be adequately allocated to commercial operations. More than enough funding has been guaranteed for these operations ever since the passage of the customs user fee several years ago. User fee collections exceed the cost of commercial operations. It is also acknowledged that each dollar dedicated to commercial operations is worth $19 in new revenues.

Mr. Chairman, your committee has long subscribed to the cost effectiveness of these expenditures, and last year, for the first time in 8 years, the Customs Service acknowledged this also. We are concerned, however, that once past this agreement, when we arrive at the point of practical application, applying resources to operations, Customs' commitment fades.

I think the committee pointed out a very important fact in this year's budget in noting that the cut calls for 396 less people in commercial operations. When you consider that those people have already been paid for by the user fee, you question the economy of such a cut.

Last year, we told you how difficult it was to reach an import specialist to clarify questions about the correct duty and classification, or application of the relevant U.S. statute, or other such key questions. That situation has not improved. The Office of Regulations and Rulings, where brokers go to ensure observance of customs' law, continues to be hamstrung by inadequate resourcing.

We are finding that the lines of demarcation between commercial and enforcement staff are being continually blurred and resources shifted to meet every sort of ad hoc enforcement need within the agency.

We urge, therefore, clearer lines of distinction between commercial and enforcement staff. We urge that commercial personnel be committed to function as commercial personnel. And we urge that adequate resources be applied to ensure that these operations are properly conducted.

One final word, Mr. Chairman, concerning automation. I think we have heard a lot of praise about Customs' vision for the future and its steps toward automation. We as an industry share that vision for the future, applaud Customs for its efforts to date, and also join Customs in that vision.

We continue to caution the Customs Service, however, against overreaching, overextending and overcommitting. As NCBFAA president Paul Wegener has said before this committee, brokers are practical people. They want more than a vision. They want essential details: How will it work? How much will it cost? Can we do it? The costs are highly significant, by some estimates 25 percent of funds expended.

Please consider the magnitude of costs to the customs broker. We are matching them. Each time a new dollar is spent on a new system or a new piece of hardware, 1,400 broker firms are faced with the cost of comparable acquisitions. We are finding that sometimes the changes are coming faster than our ability to absorb them. Costs can easily outstrip our profits if we let them, and the pressure is intense from Customs to do so.

Think, then, if you will, Mr. Chairman, of the resources that Customs must go through as they launch into the automated manifest systems, automated passenger systems, customs information exchange and others.

NCBFAA then urges the committee to insist on caution and care on the part of the Service. We advise a period of consolidation and self-assessment. We urge not that change be questioned, only that the rate of change be realistic, measured and cost effective—for Customs and for us. Finally, we believe that ABI—automated broker interface—is the cornerstone to Customs' automation, and we urge that it receive the priority that it needs.

I will conclude now, Mr. Chairman. Thank you very much for your indulgence.

[The statement of Mr. Kent follows:]

STATEMENT OF J.H. KENT, WASHINGTON REPRESENTATIVE, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION(NCBFAA)

Mr. Chairman: The National Customs Brokers and Forwarders Association (NCBFAA) welcomes this opportunity to appear before you today. We view a hearing before your committee to be one forum where the private sector can engage in a serious discussion on often complicated issues and gain not necessarily a sympathetic, but always a knowledgeable ear about our relationship with the Customs Service. Not only do you hear us out with concern and dispassion, but you also do not hesitate to step in when that is appropriate. We are grateful for your attention.

NCBFAA is, of course, the national organization for America's customs brokers and freight forwarders. Composed of nearly 1400 member companies, the association consists of primarily small businesses run by professionals in the task of expediting trade. Forwarders deal with exports, while brokers deal with imports -- and most often, these people are one-and-the-same.

Important to the Committee, though, is the unique relationship brokers and forwarders have with the United States Customs Service. It is one of mutual dependency. Rather than seeing thousands upon thousands of importers file an estimated 9.8 million formal entries per year, involving a myriad of regulations, classifications and procedures, Customs is delivered from chaos by the professional customs broker. Ninety-five per cent of all entries are filed by a broker and, of this, 90% will be filed electronically via the Automated Broker Interface (ABI). The broker works with the importer to ensure that all U.S. laws and regulations are observed, that all duties are promptly and correctly paid, and that the American public has access to products as expeditiously as the law permits. In establishing order to the mass of documents that must, of necessity, flow between the importer and his government, the American customs broker works usually shoulder-to-shoulder, and, yes, sometimes at odds, with the Customs Service. We both have a mutual responsibility that we take very seriously.

CUSTOMS' RESOURCES

The Customs Service's, FY 1990 budget proposals focus largely on drug law enforcement. It is difficult to disagree with the Congress' and Administration's sense of urgency about drugs -- and we do not. Customs however has more than one function and we have assumed the often difficult role of reminding the public that U.S. Customs must facilitate the flow of commercial cargo and ensure the collection of revenues that are a consequence of import trade. In a period when fiscal responsibility and budget deficits preoccupy our public policy, that role is highly important also.

NCBFAA strongly believes that resources must be adequately allocated to commercial operations. More than enough funding has been guaranteed for these operations ever since the passage of the customs user fee several years ago. User fee collections exceed the cost of commercial operations, a fact which had some influence on the GATT decision in 1986. It is also acknowledged that each dollar dedicated to commercial operations is worth $19 in new revenues. Mr. Chairman, your committee has long subscribed to the cost effectiveness of these expenditures and, last year, for the first time in eight years, the Customs Service acknowledged this also. We are concerned however that, once past this agreement, when we arrive at the point of practical application -- applying resources to operations -- Customs' commitment fades. Last year we told you how difficult it was to reach an import specialist to clarify questions about the correct duty and classification, or application of the relevant U.S. statute, or other such key questions. That situation has not improved. And, the Office of Regulations and Rulings -- where

brokers go to ensure observance of customs' law -- continues to be hamstrung by inadequate resourcing. We are finding that the lines of demarcation between commercial and enforcement staff are being continually blurred and resources shifted to meet every sort of ad hoc enforcement need within the agency. The creation of the position of "trade inspector" is a case in point. This is a commercial position that should require commercial experience. The role should be less that of a cop-on-the-beat as the name implies, and more a "trade specialist" or "trade officer".

Our point however is more than one of semantics: we urge clearer lines of distinction between commercial and enforcement staff; we urge that commercial personnel be committed to function as commercial personnel; and, we urge that adequate resources be applied to ensure that these operations are properly conducted.

AUTOMATION

Much attention has properly been directed to the fine progress that Customs and customs brokers have made to a fully-automated, paper-free environment. The Service has our great admiration for the leadership that it has shown. NCBFAA joins the U.S. Customs Service in this vision for the future.

We continue to caution the Customs Service however against over-reaching, over-extending, and over-committing. As NCBFAA President Paul F. Wegener has said before this Committee, brokers are practical people. They want more than a vision, they want essential details: how will it work? how much will it cost? can we do it? The costs are highly significant, by some estimates 25% of funds expended. Please consider the magnitude of costs to the customs broker. We're matching them: each time a new dollar is spent on a new system or a new piece of hardware, 1400 broker firms are faced with the cost of comparable acquisitions. We are finding that sometimes the changes are coming faster than our ability to absorb them. Costs can easily outstrip our profits if we let them -- and the pressure is intense from Customs to do so. Think then, if you will, Mr. Chairman, of the resources that Customs must go through as they launch into the automated manifest systems, automated passenger systems, customs information exchange, and others.

NCBFAA then urges the Committee to insist on caution and care on the part of the Service. We advise a period of consolidation and self-assessment. We urge not that change be questioned, only that the rate of change be realistic, measured and cost-effective....for Customs and for us. Finally, we believe that ABI -- Automated Broker Interface -- is the cornerstone to Customs' automation and we urge that it receive the priority that it needs.

CONGRESSIONAL CONFIRMATION

NCBFAA also urges the Committee to consider making the position of Commissioner of Customs subject to confirmation by the Congress.

Presently the Commissioner is a Senior Executive Service (SES) position that is appointed by the Secretary of the Treasury, without Senate confirmation. While history is always colored by the personalities involved, recent years have witnessed a succession of high-profile commissioners whose selection has been no less political than that of those subject to confirmation. The Committee is well aware of this process: a transition team reviews the political and professional credentials of proposed candidates, influence is brought to bear through endorsements and objections, and a "short list" is submitted to the Secretary of the Treasury. The analogy ends

when the Secretary appoints a Commissioner of Customs and that is that. The Commissioner of the Internal Revenue Service -- a comparable position in many ways -- will seek approval from the Senate, and the Customs Commissioner will not.

But, Mr. Chairman, why is this so important -- important enough that the private sector now stands before a House committee, suggesting that it establish a confirmation requirement that the other chamber will exercise? We believe that it will bring enhanced accountability to both Congress and to its constituents, the public. The process will permit a newly proposed Commissioner's credentials to be fully reviewed in a public environment and provide an opportunity for his views to be discussed before he is approved, rather than surface over time, while he is in office. It will force attentiveness to a broad range and cross-current of interests, rather than a narrow base of Congressmen or Senators. It will enable us to achieve a greater balance between independence and responsiveness. We believe that too much independence can be detrimental and that there must be some mechanism to draw the Commissioner closer to the reach of Congress and its constituency. Confirmation is a process that helps promote that objective. It broadens the level of input into an appointment -- for the Senate, for the House and for the public. And, after confirmation, the same process can expand the scope of obligation that is due.

Mr. Chairman, NCBFAA again thanks you for the fine work of this Committee and for our opportunity to appear before you today.

Chairman GIBBONS. Thank you.
Mr. Mayer.

STATEMENT OF JOSEPH L. MAYER, PRESIDENT, COPPER & BRASS FABRICATORS COUNCIL, INC.

Mr. MAYER. Mr. Chairman, I wish to thank you for the opportunity of presenting our views in this budget hearing based on our experience with Customs Service administration of U.S. imports of brass mill products. I am Joe Mayer, president of the Copper & Brass Fabricators Council, a trade association consisting of 17 U.S. brass mill companies, which together account for 80 percent of American production of brass mill products.

With me today is Jeff Beckington of Collier, Shannon, Rill & Scott, the law firm representing the council in its trade cases.

Although small in relation to the steel and aluminum industries, brass mills perform the same functions as those industries in supplying copper and brass metal in basic shapes which are essential to the three most important areas of our economy: building construction, motor vehicle manufacturing, and the electronic and electrical industries.

The council has been confronted by what it considers a failure on the part of the Customs Service to vigorously enforce the Nation's trade laws through the prompt and complete collection of penalty duties on unfair trade.

Our story has three elements: First, excess brass mill capacity exists worldwide. Price competition is fierce, and sales success can be determined by as little as a penny per pound. The U.S. market for brass mill products is by far the world's largest. In recent years, 17 countries have targeted dumped brass mill products on the U.S. market.

Second, U.S. brass mills have responded to this predatory pricing of imports since 1985 by initiating 14 unfair trade cases against 11 countries. It has proved dumping by all 11 countries and illegal subsidy programs by 3 of the countries. In addition, the council has petitioned the Department of Commerce to initiate monitoring of six additional supplier countries under a 1984 change to our trade law. No American industry has exceeded the efforts of the U.S. brass mill industry to ensure that fair prices prevail in the American marketplace.

The third and final element of the story is the performance of the Customs Service in ensuring that dumping and countervailing duties are collected on legally entered products, under order, and that such products are not illegally entered. Unfortunately, Customs cannot provide reliable assurances to our industry or this committee and the American public on either point.

At great expense and effort, our industry has proven in 14 separate cases that foreign companies have regularly, and over an extended period of time, illegally priced their products in the American market. After winning these hard-fought cases, industry depends on the Customs Service for enforcement. Our industry has found that what the Customs Service depends on is essentially the honor system.

Paperwork prepared by foreign companies who are demonstrated violators of our trade laws is checked, if at all, for nothing more than the filling of the required blank spaces and arithmetic. Products themselves are virtually never inspected. Such inspection as does take place is technically inadequate to ensure that the alloy and gauge of the material are correctly listed.

It could be expected that an honor system, such as that used by Customs, would include accurate and complete records. Such is not the case. Customs simply has no reliable or accessible records concerning the amount or source of dumping or countervailing duties it has collected. Taken together, this lack of either inspection or records regarding the enforcement of our unfair trade laws constitutes an alarming breach of duty on the part of our Government.

In a nation experiencing unsustainable trade deficits, such a breach of duty cannot be permitted to continue. Our complete statement, submitted for the record, outlines steps the council believes must be taken to correct this breach. These steps fall into two main areas. First, Customs must dramatically expand and improve its physical inspection of products to a level which affords statistical assurance that fraudulent entries will be discovered in a timely manner.

Second, Customs must computerize its statistics on unfair trade duty collections without further delay. Given today's electronic data-gathering capabilities, collecting unfair trade duty statistics on the equivalent of matchbook covers is unacceptable.

Representatives of the Customs Service have frequently responded to council requests by stating that resources simply were not available to provide adequate enforcement of unfair trade law. The council urges the committee to ensure that neglect of this vital function by the Customs Service is not allowed to continue because of lack of funding.

I thank you, Mr. Chairman.

[The statement of Mr. Mayer follows:]

STATEMENT BY JOSEPH L. MAYER
ON BEHALF OF THE COPPER & BRASS FABRICATORS COUNCIL, INC.

BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

BUDGET AUTHORIZATIONS FOR THE CUSTOMS SERVICE, UNITED STATES TRADE REPRESENTATIVE, AND INTERNATIONAL TRADE COMMISSION

March 22, 1989

Good morning, I am Joseph L. Mayer, President of the Copper & Brass Fabricators Council, Inc. ("Council"). This statement is submitted on behalf of the Council and its 17 member companies (see Appendix A for a list of the Council's members). The Council is a trade association which represents the principal copper and brass mills in the United States. These mills together account for the fabrication of more than 80 percent of all copper and brass mill products produced in the United States, including sheet, strip, plate, foil, bar, rod, and both plumbing and commercial tube. These products are used in a wide variety of applications, chiefly in the automotive, construction, and electrical/electronic industries.

During the budget authorization process, one factor which the Council urges the Committee to keep in mind is that of the enforcement of this nation's unfair trade laws, particularly the assessment and collection of antidumping and countervailing duties. Since early 1985, the Council and its member companies have brought a series of antidumping and countervailing duty cases before the Department of Commerce and International Trade Commission. These proceedings have thus far resulted in the issuance of eleven antidumping duty orders and three countervailing duty orders against imports of brass sheet and strip and of low-fuming brazing rod from a total of eleven countries.

In taking these measures, the Council was reacting to a steady influx of dumped and subsidized imports that began in the late 1970's and carried forward into the 1980's. The United States is the most attractive market in the world for copper and brass mill products, and foreign firms have aggressively set their sights on penetrating it. Unfair, injurious pricing by overseas mills and their establishment of subsidiary facilities and related sales arms in the United States have been two primary means to this end. Confronted by unfair competition from abroad, the Council has come to recognize that the continued existence of the United States copper and brass mill industry depends not only upon maintaining the high quality of its products but also upon protecting itself from foreign unfair trade practices.

The Council's reliance upon the United States' unfair trade laws is consequently of vital importance to this industry. More precisely, the effective enforcement of the antidumping and countervailing duty orders won by the Council is a matter to which the United States copper and brass mills assign a top priority. In this respect, this industry is basically no different from other United States domestic industries that have successfully prosecuted antidumping and countervailing duty proceedings. The cost of these cases is high, and petitioners understandably expect that the unfair trade orders which they have fought so hard to obtain will be enforced.

Unfortunately, as the Council has discovered in its cases, enforcement of unfair trade orders is seriously deficient in two major respects. First, there is no effective mechanism in place by which the Customs Service and Department of Commerce can accurately record what antidumping and countervailing duties have been assessed and collected on legally entered imports in a given proceeding or over-all. This remarkable state of affairs must be corrected. Over the last several years, the Council has repeatedly asked for a documented and detailed accounting of the aggregated duties brought in under its orders. These efforts have produced limited and often inconsistent data only after considerable checking and special compilation by the agencies.

While the Council has always been received courteously by the Customs Service and Department of Commerce, it has become painfully evident that no one truly knows what antidumping and countervailing duties are being paid. These data are simply not being maintained on a regular basis in a manner that enables the agencies to say with any assurance that the unfair trade orders are being enforced. Everyone assumes that the duties are being collected, but there is no trustworthy evidence to substantiate this claim or to ascertain the amounts of the duties.

The agencies seem to agree that a reliable system is lacking and needs to be developed. This goal, however, is proving to be elusive and taking far longer to achieve than is appropriate. For at least the last year, the Customs Service has been in the process of creating what it calls an antidumping/countervailing duty module for its Automated Commercial System ("ACS"). This computer-based program is meant to replace the "blue-line" program, which the agencies have acknowledged has been insufficient. This name derives from the practice by import specialists at the ports of underlining in blue pencil certain data on customs entry papers for later key-punching by someone else into computers. In contrast, the module calls for the relevant data to be inputed in the computer's memory at the ports in a single step from the customs entry papers.

It remains to be seen when the module will be fully operational. At the moment, the Customs Service is aiming for later this year. Even more importantly, once the module is running it will be necessary to analyze how successful the new arrangement will be. Employment of the computers will assist in the handling of the large volumes of data involved, but is no guarantee that the data will be properly stored in the computer in the first place. It is reasonable to anticipate that constant supervision of the module will be required to ensure that all data are correctly recorded in the computer's memory.

The second principal shortcoming in the enforcement of unfair trade orders is the agencies' lack of meaningful standard procedures and oversight to detect fraudulent attempts by foreign exporters and their importers in the United States to circumvent antidumping and countervailing duty orders. There are myriad ways for parties to undermine antidumping and countervailing duty orders fraudulently. There is also the strong temptation to do so, if, as the Council believes is the case, there is among importers a perception of lax enforcement. A significant complicating factor in this area is the increasingly large number of U.S. importers who are related to their foreign suppliers of dumped and subsidized goods. The corporate ties facilitate the opportunity for fraud and lessen the chances of discovery.

What has most struck the Council in regard to enforcement is the virtual absence of measures by the agencies to guard against fraudulent circumvention and to ensure that all duties owed are, in fact, forthcoming. Once again, there seems to be an assumption by the agencies that the duties are being collected and that everything is running smoothly, but this attitude does not appear to be realistic. Unlawful transshipment, misclassification, and reimbursement of antidumping duties are all prime means to evade the impact of unfair trade orders.

In the Council's cases, there is reason to suspect that all of these evasive techniques have variously been resorted to by different respondents, and the Council has persistently brought what evidence it has had to the agencies' attention. The agencies have usually been receptive and cooperative, but the Council has met with uneven success in securing a commitment of the agencies' resources.

A further crucial point is the apparent incapacity of the Customs Service to initiate a more rigorous enforcement program (regime) for imports subject to unfair trade orders than is imposed on imports subject only to regular duties. The Customs Service should be required to establish, and vigorously pursue, a special inspection and enforcement program for those imports subject to unfair trade orders or other special quantity or added duty restrictions. The Council urges that this special inspection and enforcement program be mandated in the legislative budget authorization for the operations of the Customs Service. This program would entail not only responsibilities for Customs Service personnel in the United States but also for Customs Service personnel abroad in the countries exporting dumped and subsidized merchandise to the United States.

Two examples of the need for such a special program may be helpful. In the brass sheet and strip cases the opportunity for deliberate misclassification to avoid the antidumping and countervailing duties is considerable. Brass sheet and strip are a fungible commodity that can readily be declared for customs purposes as some other copper-based alloy or designated as plate or foil without detection. Similarly, the Council suspects that the presence in the United States of subsidiaries of the companies that have been dumping brass sheet and strip in the United States has been facilitating improper reimbursement of antidumping duties. This latter problem is particularly frustrating, because United States unrelated buyers can in this manner be insulated from paying the antidumping duties. It is clear that any activity of this sort significantly erodes the remedial influence of an unfair trade order. It is equally clear that fraudulent circumvention of this nature can take place very easily and will only be revealed through

diligent enforcement. Nevertheless, the agencies for the most part have not been able to police these unfair trade orders in a manner that assures prevention of illegal circumvention.

Enforcement of unfair trade orders is something that has been sadly neglected by the agencies that are charged with administering these laws. This omission is extraordinary considering the length of time that the antidumping and countervailing duty laws have been in force. In the last four legislative amendments to these statutes in 1974, 1979, 1984, and 1988 tremendous attention has been paid to tightening up these laws to counteract injurious, unfair pricing by imports, and the complexity of these laws and the need for vigilant enforcement have grown accordingly. Yet, the agencies responsible for implementing the antidumping and countervailing duty statutes cannot say what duties are being paid and do not actively seek to root out fraudulent circumvention of unfair trade orders to insure its prevention.

It is the hope of the Council that this Committee will focus upon the enforcement of antidumping and countervailing duty orders during these budget authorization deliberations. It makes little sense for the Department of Commerce to devote extensive resources to the detailed calculation of dumping margins and subsidy amounts and then, through poor enforcement, for the antidumping and countervailing duties designed to offset the unfair pricing not to be assessed and collected from the United States buyers of the dumped and subsidized merchandise. The credibility of this nation's trade laws suffers, the protection these laws are designed to afford United States domestic industries is diminished, and the Treasury Department is denied its revenue.

An obvious aspect to the question of enforcement is the funding entailed for the agencies' programs. As far as the Council is concerned, whatever support can be given to the Customs Service, and the Department of Commerce as well, in this regard will be justified. On a number of occasions the Council has been led to understand by these agencies that enforcement of antidumping and countervailing duty orders must compete with other, more pressing tasks for their scarce resources. Undeniably there are other responsibilities to which these agencies must attend, but fundamental enforcement of unfair trade orders should not suffer as a result. If nothing else, from a purely budgetary standpoint energetic enforcement of these laws will very likely result in additional revenue for the federal government that is beyond the incremental budgetary outlay for the agencies concerned.

In summary, the Customs Service and Department of Commerce should know exactly what antidumping and countervailing duties are being assessed and collected on a case-by-case, company-by-company basis. These agencies should also be assertively on guard against fraudulent circumvention of unfair trade orders. If this Committee concludes that additional funds will assist in the enforcement of these basic activities, then the budget should be increased accordingly.

Thank you for your attention. I will be pleased to answer any questions you may have.

APPENDIX A

COPPER & BRASS FABRICATORS COUNCIL, INC.

MEMBERSHIP

AMERICAN BRASS
70 Sayre St., P.O. Box 981
Buffalo, NY 14240
716/879-6700

CERRO COPPER PRODUCTS COMPANY
P.O. Box 681
East St. Louis, IL 62202
618/337-6000

CERRO METAL PRODUCTS
P.O. Box 388
Bellefonte, PA 16823
814/355-6200

CHASE BRASS & COPPER COMPANY
P.O. Box 39548
Solon, OH 44139
216/349-0200

CHICAGO EXTRUDED METALS CO.
1601 So. 54th Ave.
Cicero, IL 60650
312/656-7900

EXTRUDED METALS
302 Ashfield St.
Belding, MI 48809
616/794-1200

HALSTEAD METAL PRODUCTS INC.
100 So. Elm St., Suite 400
Greensboro, NC 27401
919/272-1966

HEYCO METALS INC.
Stinson Dr., RD 9160
Reading, PA 19605
215/926-4134

HUSSEY COPPER LTD.
Leetsdale, PA 15056
412/857-4200

THE MILLER COMPANY
99 Center St.
Meriden, CT 06450
203/235-4474

MUELLER BRASS COMPANY
1925 Lapeer Ave.
Port Huron, MI 48060
313/987-4000

NEW ENGLAND BRASS COMPANY
16 Park Street
Taunton, MA 02780
508/824-5821

OLIN CORPORATION-BRASS GROUP
East Alton, IL 62024
618/258-2000

PLUME & ATWOOD
235 E. Main St.
Thomaston, CT 06787
203/283-4331

REVERE COPPER PRODUCTS, INC.
P.O. Box 300
Rome, NY 13440
315/338-2022

ULLRICH COPPER, INC.
2 Mark Rd.
Kenilworth, NJ 07033
201/688-9260

WATERBURY ROLLING MILLS, INC.
P.O. Box 550
Waterbury, CT 06720
203/754-0151

Chairman GIBBONS. You all have made some serious charges, and I am going to see if I cannot get some action. I am going to ask the staff to take your testimony, go through it and number each one of the charges, send them over to Customs, and have their written response made a part of this record for each one of you.

The next time we have a hearing like this, I want to put these people on the daises at the same time we put Customs on. We will put the private sector over here and Customs over here and let you all make the statements and let them respond. I am sick and tired of them not listening, and maybe we can sit here and I can listen and you all can charge. That will come out of it.

I am discouraged and disgusted to hear the charges that are made. I certainly hope they are not true, but I am afraid they are. But they ought to be responded to. So I want to send these over to Customs and have them responded to in writing. I will make them available to you so you can rebut them if they are not telling the truth.

Thank you very much. This concludes the hearing today. The hearing record will remain open until Monday, March 27. We can extend it a little while for Customs to respond for submission of written statements for the record. I am more interested, really, in getting the statements in and getting them in quickly, than I am in closing the record. So I want the staff to do that.

[Whereupon, at 1:42 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

STATEMENT OF ANN OTTOSON KING
COUNSEL TO AMERICAN CORDAGE AND NETTING MANUFACTURERS, ON BEHALF OF
AMERICAN CORDAGE AND NETTING MANUFACTURERS
AND THE CORDAGE INSTITUTE

Introduction

This further statement on behalf of the American Cordage & Netting Manufacturers (ACNM) and the Cordage Institute (CI) is submitted in response to Press Release #3 of the Subcommittee on Trade of the Committee on Ways and Means of the U.S. House of Representatives which requested written comments related to the oversight of the U.S. Customs Service (Customs). This presentation updates our previous (September 27, 1988) submission on this topic to this Subcommittee.

Current Situation

At the time of their last submission, ACNM and CI wished to bring this situation to attention of the Committee and request its assistance in obtaining a response from Customs to ACNM's long-standing letter ruling request.

In November a letter was received by ACNM from John Durant, Director, Commercial Rulings Division, dated November 14, 1988 stating,

> "This is in reference to your letter dated June 1, 1987, in which you requested an dministrative ruling concerning the proper classification of polyolefin cordage under the provisions of the Tariff Schedules of the United States (TSUS). Effective January 1, 1989, the United States will implement the Harmonized Tariff Schedule (HTS). The resulting increase in the number of ruling requests under the HTS has placed a heavy administrative burden on the Customs personnel involved in the ruling process. In order for us to respond to these submissions in a timely manner, it is essential that we direct all of our resources to the processing of cases under the HTS. Accordingly, Customs replies to ruling requests under 19 CFR 177, are limited to transactions involving the Harmonized Tariff Schedule"

(copy at A). ACNM and CI have responded by submitting on February 7, 1989 a re-written and updated request for a letter ruling (attached at B). Although Customs dispatched a post-card response giving the inquiry number, we have no official date by which a response will be given.

It is the position of ACNM and CI that this situation provides a prime opportunity for the Subcommittee to exercise its oversight authority and to guide Customs to be responsive to domestic industry requests. As the information in the petition states, this paper is supported by both trade associations representing the industry who together account for the vast majority of U.S. production of the products with which the request is concerned. While Customs has taken its time responding, a full two years' worth of incorrectly classified imports have been permitted to enter this country avoiding Congressionally - mandated duties and quotas. Customs must take action before importers feel they have established a pattern or practice giving grounds for these import classifications and necessitating more costly and more complicated Customs procedures.

Prayer for Relief

ACNM and CI request this Subcommittee to direct Customs to respond to letter ruling requests in a timely manner and not to resort to bureaucratic paper shuffling, as exemplified by the letter attached at A, to avoid its duty to respond to properly filed requests from domestic industry. We will gladly answer any further requests for information the Subcommittee may have.

Respectfully Submitted,

Ann Ottoson King
Counsel to
American Cordage & Netting Manufacturers
1667 K Street, N.W., Suite 801
Washington, D.C. 20006
(202) 955-3900

[ATTACHMENTS TO THIS STATEMENT ARE BEING RETAINED IN THE COMMITTEE FILES.]

Chevron U.S.A. Inc.
1700 K Street, N.W., Washington, DC 20006

Clair Ghylin
Vice President

March 27, 1989

The Honorable
Sam M. Gibbons
Chairman, Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Room 1102, Longworth House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

On behalf of Chevron U.S.A. Inc., I would like to thank you for the opportunity, pursuant to your Press Release Number 3, to submit our comments and concerns regarding the operations and activities of the U. S. Customs Service, in particular the drawback program. I request that our comments be included in the written record of the hearings.

Drawback is a program that allows companies that import raw materials and transform them into products for subsequent export to get a refund of most of the import duty originally paid. The purpose of duty drawbacks is to assist industries to compete in foreign markets and to increase U. S. exports. As a substantial importer and exporter, Chevron U.S.A. is directly affected by the decisions and administrative procedures established by Customs. In the past, our working relationships have been excellent. However, in the last several years these relationships have suffered as a result of what appears to us to be an anti-trade attitude on the part of Customs that impairs the ability of certain U.S. manufacturers such as Chevron to compete effectively in export markets.

Our primary concern is the publication in 1988 of Customs Service Decision (C.S.D.) 88-1 concerning import duty drawback. This final ruling, in our opinion, is unreasonable in its interpretation and overturns a long-standing practice previously supported by Customs. This practice of using a monthly, tank-farm accounting method is the most cost effective means of administering drawback for the claimant and probably for Customs. C.S.D. 88-1, however, creates the requirement that "commingled" inventories be accounted for on a daily, tank-by-tank basis and would sharply limit duty drawback claims for a number of industries, including the petroleum industry. Moreover, this ruling enormously increases the complexity and administrative burden of preparing drawback claims.

In an era of huge U.S. trade deficits, C.S.D. 88-1 seems particularly inappropriate, as it lessens the ability of U. S. exporters to compete in foreign markets, particularly in jet fuel markets. As an illustration, airlines destined for foreign ports may increase the use of bonded jet fuel, which has no import duty, rather than purchasing domestic jet fuel.

I am particularly concerned that C.S.D. 88-1 is being applied retroactively by Customs. This works to the detriment of exporters such as Chevron who in good faith have complied with the previous procedures endorsed by Customs and who, as a result, do not have the records now required by C.S.D. 88-1 to claim drawback for periods not yet liquidated. It has previously been the practice of Customs to follow the "piggyback" principle of record keeping that states, "We do not require an applicant to maintain special records for drawback if records it (the applicant) maintains for another purpose will do the job. Thus records it is required to keep for Internal Revenue may establish all the documentation it needs to prove exportation. If so, it need not keep another set of records for drawback. In drawback we will piggyback." (U. S. Customs November 1982 Seminar.) Under this "piggyback" principle, our existing records sufficed for drawback purposes. C.S.D. 88-1 now requires a separate and extraordinarily detailed set of record-keeping procedures.

In our view, the effects of C.S.D. 88-1 is clearly at variance with the Congressional intent to encourage U.S. exports by payment of import duty drawback. C.S.D. 88-1 has the following impacts on Chevron: 1) its retroactive application effectively precludes Chevron from claiming drawback on certain past exports; and 2) it prospectively requires Chevron to discontinue filing claims on certain activities for which, as a practical matter, the documentation cannot be prepared as now required.

I realize I have given you only a synopsis of the problem C.S.D. 88-1 has created for drawback participants. However, at your request, I will supply a more detailed explanation of the issues discussed in this letter.

I thank you for your interest and would welcome your assistance in helping us to resolve this issue with Customs.

Sincerely,

Clair Ghylin
Vice President

CG/w

cc: Members of the Subcommittee on Trade

Comments
of the
Dry Color Manufacturers' Association
P.O. Box 20839
Alexandria, VA 22320-1839
(703) 684-4044

April 6, 1989

Honorable Sam M. Gibbons
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Longworth House Office Building, Room 1102
Washington, D.C. 20515

Re: Press Release of March 6, 1989
Subcommittee on Trade
Notice of Review of U.S. Customs Service and Others

Dear Chairman Gibbons:

The Dry Color Manufacturers' Association (the "DCMA") is pleased to submit comments in response to the above-captioned notice in order to assist the Subcommittee on Trade in its investigation of the overall operations and activities of the United States Customs Service.

The Dry Color Manufacturers' Association is an industry trade association representing small, medium and large pigment color manufacturers throughout the United States and Canada, accounting for approximately 95% of the production of color pigments in this country. Foreign pigment manufacturers with sales in the United States and Canada and suppliers of intermediates to the pigments industry are also members of the Association.

The U.S. Custom Service is charged with the responsibility of monitoring the operations of foreign trade zones and their subzones. (19 CFR 146) As the only arm of the government charged with the responsibility of enforcement, it is of the utmost importance that the U.S. Customs Service fulfill these obligations. If these obligations are not fulfilled, foreign trade zones are left without any check on whether their operations are in compliance with the regulations governing their existence.

The members of the DCMA are particularly interested in U.S. Customs supervision of foreign trade zones and their subzones since the result of poor Customs supervision would be to give the foreign trade zones or subzones thereof an opportunity to obtain an unfair advantage over its competitors in the industry.

It is our conclusion reached from our own investigation that the U.S. Customs Service has not been adequately supervising certain foreign trade zones and their subzones as closely as is required under the regulations.

For purposes of illustration, we shall discuss Customs supervision of the facilities of the Greater Buffalo Press, Inc., a subzone of Foreign Trade Zone No. 23 located in Buffalo, New York (the "Subzone"). Greater Buffalo Press, Inc. operates ink

manufacturing facilities in the towns of Dunkirk and Sheridan, County of Chautauqua, State of New York. The Foreign Trade Zones Board granted the County of Erie's application made on behalf of the Greater Buffalo Press, Inc. to designate its manufacturing facilities in the towns of Dunkirk and Sheridan as a subzone of Foreign Trade Zone No. 23 on May 13, 1986.

After the Greater Buffalo Press case was decided, DCMA set about to determine whether or not the implementation of the Subzone in question would be done in accordance with the conditions set forth in the resolution and order of the Foreign-Trade Zones Board approving the Greater Buffalo Press Subzone. It should be noted that the order established some unique limitations on the activities permitted within the Subzone, which limitations were related to concerns which had been raised during the consideration of the application and which require constant monitoring of the activities within the Subzone. In order to determine whether or not these limitations have been honored, the DCMA has made several Freedom of Information Act requests of the U.S. Customs Service. A detailed account of our findings has been provided to the Subcommittee on Oversight of the Committee on Ways and Means of the U.S. House of Representatives, in our comments submitted on October 27, 1988. Our present submission relies upon these previous comments, which have already been incorporated into the Record and to which we respectfully draw your attention.

Since the time of our original comments, we have received a ruling from the U.S. Customs Service on our appeal of a partial denial of information. The ruling was in our favor, and resulted in the receipt of one additional piece of information, which was a July 22, 1985 request to the Buffalo District Director to assist in the review of the original application filed by Greater Buffalo Press. Therefore, we can now conclude that the record in the matter, as more fully described in our previous statement, does not reflect any instruction to the U.S. Customs Service with respect to the unique limitations imposed upon Greater Buffalo Press in the original order.

Our purpose in assessing whether the Subzone implementation has been done precisely in accordance with the original order and resolution is not designed to embarrass or find fault. Rather, our intention is to document that the Subzone application, review, approval and administration process, does not currently reflect the highest standards of governmental administration. These shortcomings stem from lack of manpower, lack of administrative precision and lack of public scrutiny, in spite of the fact that many regard subzone status as an advantageous public grant of economic advantage. Privileges of these type demand a higher degree of administrative scrutiny on implementation.

As previously noted, the U.S. Customs Service is charged with the responsibility of monitoring the operations of foreign trade zones and their subzones. (19 CFR 146) As the only arm of the government charged with the responsibility of enforcement, it is of the utmost importance that the U.S. Customs Service fulfill these obligations. If these obligations are not fulfilled, foreign trade zones are left without any check on whether their operations are in compliance with the regulations governing their existence.

The result of poor Customs supervision would be to give the foreign trade zones or subzones thereof an opportunity to obtain an unfair advantage over its competitors in the industry. Additionally, many of the companies to which the Foreign Trade Zones Board granted foreign trade zone or subzone status, only obtained that status, such as the Greater Buffalo Press, Inc., because said status was conditioned upon specific restrictions. These restrictions were deemed necessary to protect other producers due to the highly competitive nature of the given industry.

Short of a U.S. House of Representatives investigation into the operations of the U.S. Customs Service, there is no check on the U.S. Customs Service to determine if it is efficiently monitoring foreign trade zones and their subzones. An interested party has no way to check upon whether the U.S. Customs Service is effectively monitoring a foreign trade zone or subzone thereof, which if left unchecked may easily obtain an unfair competitive advantage over other companies in the industry.

As a review of the spot check reports we obtained in response to our FOIA requests regarding the Greater Buffalo Press, Inc. indicated, it is impossible to determine whether a subzone has complied with the restrictions upon which its approval was conditioned or whether the Customs officers were even informed of said restrictions.

We recommend that Customs officers conducting an investigation of a foreign trade zone or subzone thereof be required to prepare detailed reports of said investigation, specifically setting forth the investigative procedures implemented to ensure that the foreign trade zone has complied with each restriction. In this way, an interested party reviewing the reports could easily determine whether the U.S. Customs Service was fulfilling its enforcement obligations.

Additionally, a procedure short of a U.S. House of Representatives investigation should be established to regularly review U.S. Customs supervision of foreign trade zones and their subzones.

The DCMA appreciates this opportunity to participate in your investigation of the U.S. Customs Service and wishes to be of service in any way deemed necessary by the Subcommittee on Oversight.

Respectfully submitted,

J. Lawrence Robinson
Executive Vice President

[EXHIBIT WAS PREVIOUSLY PRINTED-SEE WAYS AND MEANS HEARING 100-89]

PREPARED STATEMENT
OF
ROBERT P. SCHAFFER
PRICE WATERHOUSE

Presented to the Trade Subcommittee
House Ways and Means Committee
Washington, D.C.

March 22, 1989

Mr. Chairman and members of the Subcommittee:

My name is Robert P. Schaffer. I am with the accounting and consulting firm of Price Waterhouse and direct the firm's Customs Services Practice. Price Waterhouse was retained by The American Surety Association to review current relations between Customs and the surety industry.

The Price Waterhouse Customs Services Practice provides consulting services on customs and trade matters to importers, exporters, customs brokers, and corporate sureties on customs bonds. I have twenty-five years of experience in the customs field, including over twenty years with the U.S. Customs Service. Prior to entering the private sector, I served as the Assistant Commissioner, Commercial Operations for Customs, and was a member of the Senior Executive Service.

I am pleased to have this opportunity to address the Committee on the important role of sureties in the administration of Customs laws and regulations. As a result of our review, I will also suggest several changes which will promote improved Customs/surety relations. We envision that these suggestions will be a starting point for further discussions among sureties, U.S. Customs, importers, and brokers. Our objective is to improve communications between the parties involved in surety-related transactions and to promote a more efficient working relationship with the Service.

THE IMPORTANCE OF SURETY IN CUSTOMS TRANSACTIONS

I would like to begin with a brief explanation of how surety bonds have for the last century formed an integral part of Customs transactions. Bonds serve two functions:

They guarantee that all duties and taxes will be paid.

They provide for liquidated damages which are assessed when importers, international carriers, warehouse proprietors and other parties who transact Customs business fail to comply with laws and regulations covered in the bond contract.

1. Surety Bonds Speed Clearance of Goods

The surety bond system provides several significant benefits to Customs and the importing community. One of the most significant is that the bond permits goods to flow rapidly through U.S. ports without unnecessary delays in release from Customs custody. At seaports and airports, the goods may be released within a matter of hours. At land border ports, the trucker may literally leave the engine running while Customs clearance is effected. Because the bond guarantees payment of duty and compliance with the regulations, Customs need perform only those tasks related to cargo examination before clearing the shipment. Appraisement, classification, collection of the duty and other administrative tasks can take place after the goods are on their way to final destination.

2. Bonds Protect the Government from Revenue Losses

A second important benefit is that the bond system protects the government from revenue losses. For most Customs transactions, the duty is paid after release of the shipment. Estimated duties are paid within 10 days, but increased duties may be assessed up to three years or more after the date of entry. When the importer does not pay, often due to a business failure, the surety becomes liable for payment of the amount owed.

3. Surety Plays a Vital Role in Customs Collections

A third benefit, and one which is not widely recognized, is that the surety plays a vital role in Customs collections. Customs today does not have a "Collections department," primarily because duty bills or claims for liquidated damages which are not paid by the importer are issued to the surety. In thousands of instances every year, surety's own collection efforts induce the importer to pay. Often this involves locating the importer and explaining the nature of the bill. If the importer is bankrupt or cannot be located, the surety either pays or files a protest or petition on its own behalf. Customs itself does not have to pursue further collection actions.

The total dollars actually paid by sureties in increased duties and liquidated damages reflect only a fraction of the impact of the surety role in Customs collections. Although the overall positive impact is clear, surety's contribution is difficult to quantify for two reasons. First, the surety often takes steps through its underwriting guidelines at the time the bond is executed to prevent potential defaults. For example, in certain high risk transactions, the surety may require a letter of credit from the importer as security to guarantee performance.

In general, surety's interests coincide with Customs' interests. Both strive to have the importer, carrier, warehouse proprietor, or other party who is transacting Customs business pay all amounts due and comply with the applicable law or regulations. In the relatively small percentage of transactions where surety itself must pay, surety seeks to determine the correct amount owed and efficiently settle the claim.

4. Role of Brokers in Filing Bonds

We have explained the relationship of surety to U.S. Customs. It is also appropriate at this point to explain the relationship of surety to the customs broker, who plays a key role in the bond system. Most bonds are actually filed through brokers who either have a grant of power of attorney or a supply of corporate surety's bonds that have been pre-executed by means of a facsimile seal and signature. The surety provides the broker with underwriting guidelines which permit the broker to file bonds under specified conditions without first contacting the corporate surety or its general agent. Bonds outside the broker's designated authority are to be referred to the surety or its general agent for approval before they are filed.

RECENT CUSTOMS INITIATIVES

There are so many hard-working, dedicated employees at Customs who do their jobs in spite of increasing volume and constant or declining resources, and their accomplishments should be recognized. While much of this testimony will focus on problems in the current environment, we would like to highlight some of the positive initiatives that Customs has recently undertaken. The purpose of these initiatives has been to reduce paperwork, automate claims processing, reduce backlogs, and provide more timely information.

In conjunction with pursuing the automation initiatives of the Automated Commercial System, Customs has in the last several months designed and tested an Automated Surety Interface, or ASI. ASI will speed settlement of bills providing sureties with more timely information. It will also assist surety in setting aside loss reserves and establishing underwriting guidelines. In a related project, Customs automated the claims processing tasks of the Fines, Penalties & Forfeitures (FP&F) Offices in the Customs districts. The FP&F system helps Customs manage and control the complex penalty settlement process and, at the same time, provides surety with key information through the ASI system.

New bond regulations and a new bond form became effective in 1985. Customs worked closely with sureties, brokers, and importers to simplify procedures, consolidate forms, update bond wording, and establish improved controls. Further proposed changes would require continuous bonds to be filed at a single location (the National Finance Center in Indianapolis), and would require that a cover letter signed by the surety be submitted. These changes were proposed to simplify bond retrieval and to eliminate problems that occur when surety is unaware of its potential liability because Customs brokers do not report to the surety on all bonds filed and many times Customs fails to return appropriate copies of the bond to the surety.

Project 6000 was a recent initiative in which Customs sought to clear its revenue system of past due accounts receivable. After careful examination, many claims were found to be invalid and were cancelled. Many others were settled through offers in compromise. Although the initial phases of the project created some confusion among sureties, importers, and brokers, the final result was positive. Both sureties and Customs were able to reconcile many long past due accounts and agree on settlements.

PROBLEMS AND RECOMMENDATIONS

We would like to encourage more of the progressive thinking that gave rise to these initiatives and suggest some additional ways in which Customs and surety problems can be reduced. The purpose of these comments is to identify the issues and lay the groundwork for further study by Customs and the surety industry.

1. Expedited Issuance of Liquidated Damages Claims

Liquidated damages are monetary "penalties" for breach of a bond condition and are used to guarantee compliance with the Customs laws and regulations. Customs' interests are best served by prompt issuance of liquidated damages claims because they produce revenue for the government. Delays should, of course, be minimized. An equally important function of liquidated damages is to cause the violator to comply. This is much more effectively accomplished when the penalty is imposed directly following the violation.

Surety benefits from rapid settlement of liquidated damages claims because the risk of default by the principal on bond increases sharply over time. Defaults may occur as a result of business failures or because the importer simply cannot be located. Surety's ability to file petitions for mitigation on its own behalf is also hampered by long delays because records often cannot be reconstructed.

Sureties have suffered serious harm as a result of Customs delays. For example, Customs has in some instances delayed for months in issuing liquidated damages claims for "non-filing," or failure to pay the estimated duties within 10 working days after release of the goods. In some situations, the failure to pay was caused by either the importer's or the broker's financial condition. In other situation, the failure to pay was caused by fraudulent activities by the broker.
In one notable case in Los Angeles, a customs broker converted to his own use $1.5 million in duty entrusted to him by 73 importers. Customs failed to notify either the importers or the surety for a period of six

months, allowing 306 separate entry transactions to occur without payment of duty before sending the first notice. More than three-quarters of the offending acts could have been avoided if the notices had been issued timely.

Sections 142.15 and 142.27 of the Customs Regulations provide that the District Director shall make immediate demand for liquidated damages in each case where there is a failure to file the entry timely. Six months is certainly not immediate. But there is currently no definition of "immediate" in the regulations which requires Customs to act within a specified time period.

Customs should be required to define "immediate" and set a specific time limit on issuance of non-filing claims. Then, if Customs fails to provide timely notice, the government should be precluded from issuing a claim.

2. Expedited Settlement of Liquidated Damages Claims

For the same reasons that liquidated damages claims should be promptly issued, they should also be promptly settled. Although violators and sureties are held to strict time limits for filing petitions, the only time constraint for Customs in settling liquidated damages claims is the statute of limitations. Thus, the violator of surety has 90 days to respond, while Customs has six years to act.

Delays in claims settlement are not new. In a report issued in 1978, the Comptroller General noted that penalty case settlement delays were a problem. In response to this report, the Under Secretary of the Treasury acknowledged that the penalty process was unduly prolonged, the government was deprived of revenue, the violator was unduly punished by the process itself, and the objective of the penalty as a deterrent was seriously undermined. Ten years later, the same findings could be made.

A further problem with prolonged penalty settlement is that the actual violator often escapes payment if long delays occur. For old cases, the surety often has to pay because the violator cannot be located. While collection from the surety protects the revenue, it serves no purpose as a punishment or deterrent since the surety is never a party to the violation.

Customs efforts to solve this problem have concentrated on strict enforcement of petitioning time limits. Little has been done to address Customs' own unacceptable delays, many of which appear to be caused by lack of adequate clerical support. Delays continue to be a problem and are even escalating as Customs' enforcement efforts increasingly rely on selectivity and post-audit measures, coupled with intensive use of penalties to insure compliance.

To remedy this situation, Customs should establish a six month time limit for decisions on petitions submitted seeking relief from liquidated damages cases. If no decision is issued within that time, the petition should be deemed allowed. This change would enhance Customs' effectiveness in deterring future violations, and would assist surety's efforts to collect from the actual violator.

3. Protests Should Be Timely Decided

The statute provides that Customs has two years to act on a protest. However, Customs is able to decide the vast majority of protests within one year. In practice, most can be decided within a few weeks. More complex cases requiring intensive analysis or investigation should be decided within the two year legal limit.

As we have already mentioned, surety's risk of loss escalates with the passage of time due to business failures and difficulties in reconstructing documents. Legitimate importers are severely harmed by unreasonable protest review periods because refunds of estimated duties

to which they are found to be entitled are delayed, and companies are unable to accurately determine the costs associated with their current business transactions.

Customs also experiences problems when the protest review process falters. Backlogs accumulate, employees knowledgeable on the issues of a particular case are no longer available, paperwork gets lost, and Customs becomes inundated with status requests from frustrated importers.

To benefit all parties, Customs should promulgate regulations to require that protests must be approved or denied within one year, unless the review period is extended for good cause and notice of the extension is given to the importer and surety. If Customs fails to act within one year, or within two years if the protest has been extended, the protest should be deemed approved.

4. Customs Should Proceed with Implementation of the Automated Surety Interface Program.

The Automated Surety Interface program should be implemented as soon as the necessary programming can be accomplished. Customs itself has described the system as a concept that could "significantly reduce the problems currently being encountered" by both Customs and sureties. Benefits to Customs include reduced manpower requirements, fewer delinquent receivables through early identification to sureties, and improved bond sufficiency parameters. Surety benefits include information to project anticipated future liability and to determine potential bad risks.

Public concerns regarding ASI center on two issues:

1. Importers and brokers are concerned that release of certain data to the sureties will compromise proprietary business information.

2. Sureties are concerned that ASI will not provide legally acceptable data usable for determining the authenticity of claims, and that Customs will unreasonably decrease surety's response time and demand payment virtually by return mail.

Customs addressed these concerns in a Federal Register notice dated March 1, 1988 and modified the data elements being provided as part of the interface. Some sureties assert that, as a matter of law, they are entitled to all information which Customs possesses since they are a full party to the commercial transaction. Customs acknowledged this position in part, agreeing to provide certain data elements regardless of a claim, and other data elements after a bill has been issued. Customs also restated its intent to improve rather than frustrate the dissemination of necessary data and to enhance the quality of information being made available to sureties.

Customs should proceed as quickly as possible with implementation of the program while continuing to work with importers, brokers, and sureties to educate them on the benefits of ASI. Customs should also seek to provide surety with expanded pre-bill information while insuring that adequate safeguards are in place to prevent the unauthorized disclosure of sensitive information.

5. Customs Should Implement Procedures for Centralized Filing of Continuous Bonds

Customs bonds are either single transaction bonds or continuous bonds. Single transaction bonds are filed with the entry paperwork with which they are associated. Continuous bonds, which can cover thousands of transaction in several ports of entry, are currently maintained in the district in which they are submitted. As we mentioned earlier, Customs plans to require all continuous bonds to be submitted to the National

Finance Center along with a cover letter from the surety attesting to the fact that a copy of the bond is on file with the surety or its claim-handling agent.

This new procedure will give sureties more underwriting control and will guarantee that sureties are aware of bonds filed by customs brokers. Customs will benefit from the new procedure through reduced paperwork and better control. Customs should take steps to implement centralized filing as soon as possible.

6. Legislation Should Be Enacted to Require Bonds on All Transactions Where Bonds Are Currently Required by Regulation

Customs transactions have been secured by surety bonds since at least 1894. Nonetheless, bonding is required by statute in only three situations. Surprisingly, none of the three statutes requires bonds for the filing of entries. However, the Secretary of the Treasury has been empowered by the Congress to require bonds by regulation on all importations as may be deemed necessary to protect the revenue or to insure compliance with any provision of law or regulation.

The use of bonds, most of which are secured by corporate sureties at nominal cost to the importer, has enabled the Customs Service to protect the revenue and insure compliance with federal regulations while keeping the government's administrative costs low. Corporate sureties are uniquely situated to assess the financial worth and reliability of individual importers, and to enforce payment or performance under the bond contract.

Importers and brokers endorse the bond system, and overwhelmingly prefer private sector administration of the system to various alternatives proposed by the Customs Service over the years. Corporate sureties' expertise in underwriting risks enable them to protect the government from substantial but unpredictable defaults at low cost to the public.

The Congress should enact legislation to codify an existing practice and to require bonds on all Customs transaction, except those transactions for which bonds are not currently required by regulation. Such a law would not be without precedent. A similar concept exists in the Miller Act (49 Stats. 793, chapter 642), which requires that contractors on certain public works furnish a bond for the protection of labor and materialmen. The Customs bond system is vital not only to insure collection of duties and taxes on imported goods, but also to enforce 400 laws and regulations administered by U.S. Customs for 40 other agencies.

7. The Use of Simplified and Standardized Penalty Mitigation Guidelines Found in the "Option 1" Approach Should Be Expanded

Customs has developed a highly efficient method of resolving liquidated damages claims arising from entries that are filed late. Because late filings occur frequently and are in the nature of "parking ticket" violations, Customs has established an "Option 1" procedure whereby violators can pay a predetermined mitigated amount based on the number of days late and an "interest" charge on the past due duties. "Option 2" is of course the normal petitioning process whereby importers can argue that no violation occurred or that the "Option 1" amount is incorrect.

The use of this simplified procedure eliminates the need for importers and brokers to file lengthy petitions and for Customs officers to review petitions and issue decision letters. The predetermined mitigations also eliminate inconsistencies in penalty assessments that can occur when each case has to be reviewed on the merits of the petition.

Late violation claims are one of four or five types of violations that form the preponderance of liquidated damages claims against surety. Many of these are high volume but routine claims that are typically the result of simple mistakes or ordinary negligence on the part of the importer or broker.

Customs should identify additional types of cases which are suitable for an "Option 1" approach and implement new guidelines for mitigating these cases. For example, claims involving failure to produce missing documents, failure to redeliver merchandise not legally marked, and failure to export or destroy merchandise entered under a Temporary Importation Bond appear to be good candidates for "Option 1" mitigations. Benefits to Customs would include shorter processing time, lower staffing needs, and reduced backlogs.

8. Surety Should Be Involved in the Development of Paperless Entry Procedures

Customs is developing paperless entry procedures whereby hard-copy documentation will not be filed for most entry transactions. In fact, modified paperless procedures are already being tested in some ports today. This progressive program closely ties in with the overall design of the Automated Commercial System, including the Automated Surety Interface, Automated Broker Interface and Automated Manifest Interface.

9. Customs Needs More and Better-Trained Personnel to Settle Penalty Claims

Customs' problems with inadequate staffing and guidance for field personnel are well documented and have been the subject of public comment. These same problems affect sureties, particularly with regard to the settlement of liquidated damages claims.

Customs efforts to automate the penalty process should be applauded, as this important area has traditionally required intensive clerical support for filing, typing, photocopying, paperwork routing, and tickler file maintenance. The Fines, Penalties & Forfeitures module of the Automated Commercial System is crucial to the success of Automated Surety Interface since data on liquidated damages claims is a major element of the system.

However, the ASI test program revealed that much of the data in the system is incorrect, either because the status of cases has not been updated due to lack of clerical staff, or because the status codes and other key information have been input wrong. In some districts, it may take several months for petitions to be associated with case files, and even longer for the system to be updated to reflect that a petition has been filed. Automation of the penalties office is essential, but the system is ineffective if staffing levels are too low to maintain it.

Penalties office personnel need better guidance in matching penalties to the degree of culpability and the seriousness of the violation. The following example illustrates the need for a more reasonable approach to claims settlement.

Surety received a demand for late entry filing where the importer was bankrupt. The surety paid $50.00 in accordance with the normal "Option 1" guidelines. However, some confusion arose over the time period allowed for surety's response. The notice stated that surety had 60 days to pay. The district office, following provisions in the regulations, allowed only 30 days. But the surety was aware that Customs had recently changed its procedures to allow 90 days. The district office cashed surety's check but disallowed it as settlement of the claim, even though the money was deposited within 90 days. Customs is now demanding over $10,000 in settlement of this claim involving a duty free entry filed one day late where the harm to the government was negligible.

10. District Offices Need Clear Guidance on Claims Involving Other Federal Agencies

District penalties offices need better guidance on the procedures for reviewing and mitigating claims involving the enforcement of other agency requirements. Because agreements are negotiated independently with each agency, processing guidelines vary. With some agencies, the other agency may recommend a penalty while Customs has final decision-making authority. With other agencies, Customs is bound by the other agency's decisions. However, paperwork often goes awry, leaving the petitioner in doubt as to the settlement of a claim. For example, one surety recently received a notice from the Environmental Protection Agency demanding payment of $35,000. One month earlier, the surety had received notice from Customs that the same case had been cancelled in full.

* * * * *

Thank you for the opportunity to present these views to the committee.

STATEMENT
OF
THE UNITED STATES ASSOCIATION OF IMPORTERS
OF TEXTILES AND APPAREL
BEFORE
THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS
ON
THE FISCAL YEAR 1990 BUDGET AUTHORIZATION FOR THE U.S. CUSTOMS SERVICE

MARCH 27, 1989

The United States Association of Importers of Textiles and Apparel (USA-ITA) is a national organization of textile and apparel importers, including some of the leading importers and retailers of textiles and apparel. A list of our members is attached.

Importers of textiles and apparel account for approximately one-half of all entries processed by the Customs Service annually. As importers of textiles and apparel, our members have an intense interest in the operation and administration of the Customs Service and the laws and regulations which guide and control both the agency and our commercial activities.

During the past several years, our industry, in particular, has been asked not only to respond to continuing demands from a growing domestic textile industry for greater protection in the form of tighter quota restraints on imports of textiles and wearing apparel; it has been confronted almost daily with new Customs rules, restrictions and enforcement initiatives which have wreaked business havoc by creating uncertainty and causing delays. Thus, the Customs Service has in many instances done on its own what President Reagan and his administration opposed in the legislative process -- creation of even more stringent restraints on the flow of imported textiles and apparel.

Most of our members have encountered the dreaded uncertainties, delays and seizures of their merchandise in moving shipments through Customs. In fact, the resolution of Customs-generated issues was a primary consideration in the creation of this Association. As the Congress considers the activities of the Customs Service and its budget request for 1990, we ask the Committee to examine closely Customs commercial operations, particularly its ruling procedure and Harmonized System implementation, and Customs textile and apparel enforcement programs, to ensure that the Customs process is not a barrier to legitimate trade in this area, and that due process of law is not being denied, de facto, by certain Customs enforcement procedures.

COMMERCIAL OPERATIONS

There is nothing quite so vital to our members as a smooth running Customs commercial operation which responds expeditiously to ruling requests from the public and is composed of well-trained, knowledgeable Customs import specialists, regulatory auditors and inspectors. Especially at this time when Customs and the importing community is adapting to a brand new commodity classification system, the Harmonized Tariff Schedules of the United States (HTSUS), importers are looking to Customs Office of Regulations and Rulings and the National Import Specialists for guidance in classifying their merchandise, an absolutely critical activity which effects pricing and availability of textiles and apparel.

While we commend Customs for the efforts of a small corps of people who attempted to train Customs personnel, Customs brokers, and importers in the intricacies of the new classification system and its concepts, it is now apparent that at least in the textile and apparel area, perhaps the most complex and certainly one of the most politically sensitive sections in the HTSUS, many crucial implementation activities were either not recognized or deferred has had to readjust its plans, orders, sources, delivery schedules, etc.

For several years, importers of textile and apparel asked Customs to provide classification guidelines for textile and apparel that would provide advice and guidance to importers under the HTSUS. Even though Customs was, in effect, granted a much needed year delay in implementation, the textile guidelines were not issued until two weeks before the HTSUS went into effect on January 1, 1989.

Incredibly, Customs also delayed publishing the new invoicing requirements dictated by the revised textile and apparel classification scheme until December 23, 1988, just eight days before the HTSUS went into effect. And although many new invoicing requirements called for use of the metric system, Customs did not provide a table for conversion to the metric system until the issuance of Harmonized System Fact Sheet #15 on January 10, 1989.

For textile and apparel importers, Customs delay in notifying importers of changed requirements created hardships. Again, on January 10, 1989, Customs issued rules pertaining to its classification of garments and clothing accessories entered as components or sets. These rules affected visa and quota requirements and in some instances prevented importers from taking delivery until new visas were obtained.

In the period immediately following implementation of the Harmonized System, numerous textile and apparel entries were rejected for failure to provide information not necessary for proper classification because Customs personnel either misunderstood the basis of classification or applied the new invoicing requirements inflexibly. To its credit, Customs headquarters did urge ports to apply the new invoicing requirements leniently for a three-month period ending March 31, 1989, and only require the missing invoice information when it was absolutely essential to the classification of the merchandise. Unfortunately, not all ports have adhered to this direction. Many entries have been rejected and the delivery of merchandise delayed because of Customs tardiness in issuing or clarifying the rules and the ports' failure to adhere to Customs headquarters urging.

While we do not expect Customs to be omniscient and anticipate every apparel classification issue which may arise, we do expect rulings which change long standing visa requirements to be applied with some sensitivity to the trade being disrupted. For example, sweater-like cardigan garments had frequently been classified as jackets under the TSUSA because they were finer than 12 gauge and had certain "jacket characteristics." This classification had an effect on the textile category under the MFA. Customs determined, however, that under the HTSUS, these same cardigans are classifiable as "sweaters, pullovers, sweatshirts, waistcoats and similar articles" which require a different visa. Many importers were caught by this ruling and had to obtain new visas at considerable cost in money and delayed deliveries.

Moreover, Customs continues to resist Court of International Trade decisions it does not like. For example, Customs resistance to a decision which distinguished nightwear from daywear has left importers in limbo. Importers who believe they are following the dictates of the Court continue to have merchandise seized as noncomplying.

These are but a few examples which illustrate Customs inadequate attention or indequate devotion of resources to a major system conversion which has been extremely costly to importers. As a matter of commercial reality importers generally execute orders many months before taking delivery. One cannot expect immediate importer compliance when long-standing rules are changed with no or little notice.

In what must be interpreted by textile and apparel importers as yet another Customs effort to slow the entry and delivery of merchandise, Customs recently decreed that all importations of

textiles and apparel from Hong Kong would now be subject to the "live entry procedure;" i.e. the presentation of an entry/entry summary and payment of duties before Customs will release the merchandise. The announced reason for this change in practice was the Commerce Department need for accurate import data under the HTSUS which have been verified by import specialists. We do not question Commerce's desire to obtain accurate import data, but other techniques are used by Customs to verify this information for the vast number of products entering the U.S. which like textiles and apparel from Hong Kong are not subject to quota requirements. USA-ITA has proposed a simple modification of the documentation required to be submitted prior to release of merchandise to eliminate this problem with less delay to importers and less burden on importers and Customs alike.

Initially Customs intended to implement this important change in entry procedures for a significant volume of textile and apparel trade with barely one month's notice and no prior comment. However, the proposed "live entry procedure" has been delayed and is now under study in Customs.

The proposed "live entry procedure" is an example of a serious problem in Customs' decision-making process in the commercial area: its failure to consider importers' interests or soliciting importers' views. Too often, Customs reaches decisions on policy changes in the dark and announces these decisions only to discover flaws which might have been avoided with prior input from the import community.

We believe it is essential that Customs solicit the views of the import community before making major decisions affecting importers' interests. This requires that Customs utilize administrative due process procedures to allow prior notice and an opportunity for public comment when these issues arise.

We urge the Subcommittee to scrutinize Customs past inadequacies carefully in the hope that in its oversight capacity, the Committee can prevent Customs procedures from being used to distort existing trade, and can prevent similar problems in the future by increasing resources or redirecting resources to the commercial operation area.

MEMBERSHIP OF CUSTOMS ADVISORY COMMITTEE

The recently created Advisory Committe on Customs Comercial Operations also provides a potentially useful mechanism for importer input into Cusoms Commercial Operations. However, the Advisory Committee as currently constituted lacks a single importer or retailer of textiles and apparel. We recommend that the Subcommittee take appropriate action in its oversight capacity so that this omission is rectified at the earliest date. A vacancy now exists on the Committee which should be filled by an importer or retailer of textiles knowledgable in Customs Commercial Operations.

THE CUSTOMS RULING PROCESS

The Customs ruling process is another area of Customs administration which the Trade Subcommittee should examine closely. The time is most propitious. The Customs Service itself recently published a notice of proposed rulemaking (54 F.R. 8208, February 27, 1989) inviting comments on a series of significant proposals affecting the ruling process. Some of these proposals are new and demonstrate a thoughtful approach to handling the thousands of additional requests for rulings under the HTSUS. On the other hand, some of the proposals are resurrections of discredited ideas.

In past years, the long delays in obtaining classification rulings, particularly in the textiles and apparel area where constantly changing styles make speed and certainty in the ruling process essential, often created a barrier to trade. However, with the coming of the HTSUS, the Customs Service responded to the needs

of the importing community and created the District Rulings Program in which most binding rulings are issued within 30 days, or 120 days if the issue presented must be sent to Headquarters. We understand that this program, which Customs intends to include in its regulations, has been working well.

The Customs Service has also proposed another salutary change to the ruling process which would permit it to delay for 90 days the effective date of a ruling which modifies or reverses a written ruling or a Customs practice treating substantially identical transactions. The key to this new procedure would be a showing of reliance by the importer on the ruling or practice being modified. We heartily endorse this proposal inasmuch as it demonstrates a recognition by Customs that importers often rely on Customs rulings available to the public, but not personally obtained by them. What the proposal does not recognize, however, is the long lead time in manufacturing and bringing a product to the U.S. Thus, we recommend that Customs publish changes in rulings or practice in the Federal Register 180 days prior to their effective date.

Two proposals which this Subcommittee should prevent from being adopted are (1) the proposal which obligates a ruling recipient to enter its merchandise in accordance with that ruling or be subject to a penalty for false entry; and (2) the proposal to eliminate the "clearly wrong" test in Customs consideration of a change of practice. The first proposal has been discredited in the past. The second proposal, although apparently innocuous, could have a major adverse impact on importers.

Under current law and practice, importers who obtain binding rulings, which they believe are wrong, need not follow them and may enter the merchandise described in the rulings under the classifications they believe to be correct, as long as the entry documents accurately describe the merchandise. Customs proposal to penalize importers who fail to follow a Customs ruling is extreme, unnecessary and legally questionable. Customs frequently exercises the authority to reject entries which contain information or classifications which it believes are inaccurate. Thus, to impose a penalty in this situation is extreme. Indeed, the proposal may encourage importers not to obtain rulings, especially if there is a chance the ruling may be adverse. Furthermore, current Customs statutes and regulations subject an importer to a penalty where the information contained on an invoice or entry is false, not where an importer disagrees with a Customs ruling it obtains. If a penalty is to be imposed in this situation, it should be legislated.

In addition, if implemented as drafted, Customs regulations would preclude a court appeal under the normal protest route of an adverse ruling in instances where a classification disagreement affects textile quota categories: If the importer cannot obtain a visa for the category Customs deems correct, the importer cannot offer the merchandise for entry without penalty and would have no basis for protest. Even when the importer is in the position to obtain a visa for a correct category, Customs proposal would prevent the importer from obtaining an expeditious review based upon a denied entry.

The "clearly wrong" test has been a part of Customs regulatory scheme for more than 30 years. It provides that no ruling may change an established and uniform practice by imposing a higher rate of duty or charge on an article unless the practice is determined to be clearly wrong. Customs now proposes to eliminate this long-standing standard in the belief that publication of a proposed change in the Federal Register, with an opportunity for public comment, protects against arbitrary changes. However, notice and comment have always been a part of the Customs change of practice procedure. The "clearly wrong" test establishes a high standard which has to be met before a practice on which importers rely can be changed. Thus, a party challenging an established and uniform practice now has a difficult burden of proof and persuasion. Customs proposal would transfer that burden to the importer.

Although our Association applauds Customs for the efforts it has made in improving the ruling process, we urge the Subcommittee to require Customs to create an even speedier ruling process for products subject to quotas and other quantitative restraints. The Customs Service has been quick to establish special entry procedures for these products which often delay deliveries and result in detention and seizures. If these procedures are necessary to enforce the law, then other procedures are necessary to balance the scales. We believe procedures should be adopted which will ensure that rulings are issued within two weeks of receipt by Customs or within two weeks of a detention or seizure.

ENFORCEMENT PROGRAMS

The Association continues to be concerned over Customs enforcement programs and the effect they have on legitimate trade. All importers support Customs efforts to detect and penalize persons who violate Customs laws. Those people are not only defrauding the revenues or evading lawful restrictions, they are competing unfairly with law-abiding importers. However, when law enforcement efforts have an adverse effect on the lawful, those efforts must be examined carefully.

Since 1986, as this Subcommittee knows, the Customs Service has been broadly applying 19 USC 1595a, the provision of law which permits seizure of merchandise imported contrary to law, to textile and apparel imports. This provision has been used to seize merchandise where actual quantity or weights disagree with the visaed quantity or weights, even though Customs could have prevented the merchandise from entering the United States without imposing additional costs on importers. Only after importer groups complained to the Congress and Customs vociferously did Customs slightly modify its policy. Nevertheless, we still are troubled that Customs is utilizing this seizure authority to disrupt and add unnecessary additional costs to legitimate trade.

We are also troubled by Customs latest broad-brush investigation of rebates of insurance and freight in the Pacific trade and its attempt to limit the use of the prior disclosure law. A letter sent by Customs in October to over 1,350 importers, including some members of our Association, informed the recipients that they were under investigation. Now six months later, a general questionnaire has been sent to each importer which received the original letter requesting the extensive information about the company's methods of doing business and shipping merchandise. This questionnaire clearly establishes that the so-called investigation was in its infancy and that the purpose of the letter was to cut off "prior disclosure" benefits. Clearly, the time and attention, not to mention costs, associated with addressing a potential Customs investigation was and is injurious and disruptive to business. Equally as serious is the attempt to preclude the use of the prior disclosure provision of 19 USC 1592. If Customs believes "prior disclosure" rules are faulty or inadequate, it should ask this Subcommittee to address the problem, not alter those rules unilaterally and distort Congressional intent.

Customs' followup questionnaire compounds the troublesome nature of this investigation. The questionnaire requests information on the vendors and country of origin of merchandise, as well as shipping terms and the use of freight forwarders -- information already available to Customs on entry documents in its possession. Development of this information by importers for all their entries is an enormously burdensome undertaking. The questionnaire was issued without regard to this burden and, insofar as we are aware, without review by the Office of Management and Budget as required under the Paperwork Reduction Act.

Finally, we are concerned with the growing penchant of Customs officers to seize commercial shipments for an assortment of perceived violations of law. When 19 USC 1592 was amended in 1978, the Congress decreed that seizure was particularly harsh and disruptive to business and should only be used in certain,

specific, limited instances. With the passage 19 USC 1595a(c), seizure is becoming the rule again not the exception. Although no court would find that the Customs administrative review procedures deny due process of law to the owner of merchandise, these seizures involve a de facto denial of due process. The legality of a seizure is never an issue with Customs, only the amount of the penalty which will be imposed. Considering the cost and the all- or nothing nature of litigation, it is a rare importer who will challenge a seizure in court. Thus, Customs will continue to seize merchandise free from self-examination or court examination. Therefore, we urge this committee to look anew at Customs seizures of commercial importations and strictly limit the seizure authority of 19 USC 1595a(c), much as Congress did when it amended 19 USC 1592 in 1978.

We appreciate the opportunity to present this statement to the Subcommittee.

USA ITA

UNITED STATES ASSOCIATION OF IMPORTERS OF TEXTILES AND APPAREL

47 West 34th Street, Suite 804
New York, New York 10001

PHONE: 212-714-2748 FAX: 212-967-8242

USA-ITA MEMBERSHIP LIST
3/89

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